LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 449

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, ET AL., PETITIONERS,

vs.

W. L. GAZZAM

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR CERTIORARI FILED NOVEMBER 8, 1949.

CERTIORARI GRANTED DECEMBER 19, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK, PETITIONERS,

vs.

W. L. GAZZAM

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX

	Original	Print
Record from the Superior Court of the State of Washington for Kitsap County	1	1
Complaint	1	1
Answer	12	10
Judgment and order of dismissal	14	11
Opinion of Supreme Court of Washington on first appeal	18	12
Judgment	34	25
Complaint	35	26
Answer	46	35
Supplemental answer	48	37
Reply to supplemental answer	49	38
Decree and permanent injunction	50	38
Opinion, per curiam	58	40
Judgment	59	41
Clerk's certificate (omitted in printing)	68	
Order concerning statement of facts and exhibits	a	41

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 12, 1949.

	Original	Print
Stipulation concerning statement of facts and exhibits	b	42
Statement of facts	1	43
Plaintiff's opening statement	2	43
Defendant's opening statement	9	48
Testimony of W. L. Gazzam	13	51
Lois B. Stapleton	46	77
Cordie Robillard	67	93
William B. Morganson	71	97
W. L. Gazzam (recalled)	97	116
C. L. Stickney	100	119
Argument on motion to dismiss	117	132
Testimony of Charles Shannon	120	134
Oral Opinion	129	140
Memorandum opinion	141	151
Certificate to statement of facts	143	152
Statement of facts after remand by Supreme Court of Washington	1	153
Testimony of Ernest W. Holbrook	59	154
Opinion	187	168
Certificate to statement of facts	196	173
Stipulation and supplemental stipulation as to record	197	174
Order allowing certiorari	200	177

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

No. 22247

W. L. Gazzam, Plaintiff,

vs.

Building Service Employees International Union, Local 262, Sam Nance, William Morganson, Charles Meyer and E. W. Holbrook, Defendants

Complaint—Filed June 29, 1946

Comes now the plaintiff and for cause of action against defendants, alleges:

I

Plaintiff is a resident of Kitsap County, Washington and is, and at all times herein mentioned has been, the owner and operator of a hotel known as the Enetai Inn in the City of Bremerton in said county and state. Said hotel contains one hundred rooms for the accommodation of transient guests. In the operation of said hotel plaintiff at all times herein mentioned has employed approximately fifteen employees, consisting of desk clerks, a house-keeper, an engineer, maids and bell boys.

II

The defendant, Building Service Employees International Union, Local No. 262 is now and at all times herein mentioned has been, a labor union and an unincorporated voluntary association organized under the labor laws of the State of Washington, and maintains its office in said City of Bremerton. Plaintiff knows neither the number nor identity of the members of defendant union, but alleges on information and belief that said members are too numerous to be joined as parties herein. The defendant, Sam Nance, is president of said union, defendant William Morganson, is secretary and treasurer thereof and defendant, [fol. 2] Charles Meyer, is an organizer and business agent of said union. Defendant E. W. Holbrook is secretary of the Central Labor Council of Bremerton. All of said individual defendants reside in Kitsap County, Washington.

III

At no time mentioned herein has any of plaintiff's employees been a member of defendant union, nor has defendant union been authorized to represent any of said employees or bargain for them regarding wages, hours or conditions of employment or for any other purpose. There is not now, nor has there been at any time, any dispute between plaintiff and any of his employees regarding wages, hours or conditions of employment.

IV

Sometime prior to the month of May, 1946, the defendants informed plaintiff that they desired to organize plaintiff's employees by securing their membership in defendant union. Plaintiff replied that defendants might freely solicit his employees on the hotel premises during their hours of work. Plaintiff is informed that thereupon the defendants did solicit such membership from said employees, but were in each instance refused. Thereafter defendants demanded of plaintiff that he sign a contract with said union, the exact terms of which plaintiff is unable to state, but which, as explained to plaintiff, would require plaintiff's employees to join defendant union or be discharged. Plaintiff refused to enter into such a contract.

V

Sometime prior to May 27, 1946, the exact date being unknown to plaintiff, defendants wrongfully, unlawfully and maliciously entered into a conspiracy among themselves and with divers other persons to plaintiff unknown, to force plaintiff wrongfully and unlawfully to coerce his said employees to join defendant union, or in the alternative to destroy plaintiff's said hotel business. The coercion to be [fol. 3] exercised by plaintiff upon his employees, which was one of the objects of said conspiracy as aforesaid, was to consist of a contract between plaintiff and defendant union providing that all of plaintiff's employees would join defendant union, regardless of their wishes in the matter, or be discharged. Such coercion was and is wrongful and unlawful in this, that it would be in violation of the right of said employees to be free to decline to associate with their fellows, and would curtail and destroy their right to full freedom of association, self-organization and

designation of representatives of their own choosing for collective bargaining, and would further destroy their right to be free from interference, restraint or coercion of their employer in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining, or other mutual aid or protections, all of which rights and freedoms are guaranteed to such employees by the public policy of the State of Washington as declared in Laws of Washington, Extraordinary Session of 1933, Page 10, Section 2.

VI

In furtherance of said conspiracy defendants caused to be filed with the Central Labor Council of Bremerton a complaint against plaintiff and a request that plaintiff's said hotel be placed on the "we do not patronize list," published and maintained by said Central Labor Council for the information and guidance of the several affiliated unions in the Bremerton area, of which there is a substantial number. The purported ground of said complaint was that plaintiff was unfair to organized labor, whereas defendants then and there well knew that plaintiff was not unfair to organized labor, that no dispute existed between him and his employees, and that no dispute or controversy [fol. 4] existed between plaintiff and any labor union whatsoever, other than the alleged dispute with defendant union consisting of plaintiff's refusal to coerce his employees as aforesaid.

VII

Pursuant to said complaint and request, the defendant Holbrook, purporting to act as secretary of said Labor Council, scheduled a hearing thereon to be held at the office of said Central Labor Council on May 7, 1946, and requested plaintiff to attend in person or by representative. Plaintiff being unaware of said conspiracy, was present by his attorney. At said hearing the defendants renewed their aforesaid demand that plaintiff coerce his employees by entering into a contract with the defendant union containing provisions as aforesaid. Plaintiff then and there objected to such coercion on the ground that it would destroy the freedom of his said employees to join a labor organization of their own choosing or to refuse to join any, and would be contrary to the public policy of the State of Washington

as hereinabove more fully set forth. At the same time plaintiff expressed his willingness to negotiate with said union regarding any matter not involving coercion of his employees. Defendants did not accept plaintiff's said offer to negotiate on any other ground, but requested a further opportunity to address plaintiff's employees in a body, which request the plaintiff readily granted.

VIII

Pursuant to such request plaintiff called a meeting of his said employees at the Enetai Inn on May 10, 1946, which was attended also by all of the individual defendants, as well as four members of the Central Labor Council of Bremerton. Plaintiff was not present but was represented by his attorney. At said meeting the defendants explained to said employees, fully and without interrup-
[fol. 5] tion or hindrance, all of the advantages claimed by them to accrue from membership in defendant union, and invited and urged said employees to join. No reply was made by or on behalf of plaintiff to said arguments and explanation of defendants, but plaintiff's attorney simply stated that plaintiff was expressing no opinion on the matter and that said employees were to be free to decide for themselves. At the conclusion of said remarks, arguments and comments by defendants, all persons not employees of plaintiff retired from the room, leaving said employees entirely to themselves, whereupon they voted not to join defendant union. As announced by the representatives of said employees, the vote was as follows: one in favor of joining the union, one undecided, and nine against joining defendant union.

IX

In furtherance of said conspiracy, defendant Holbrook, purporting to act as secretary of said Labor Council, on or about May 29, 1946, notified plaintiff by letter dated as of said date, that on May 27, 1946 said Central Labor Council had taken formal action placing plaintiff's said hotel on the "we do not patronize list." Plaintiff received said letter on the same day, and simultaneously defendants caused a picket to patrol the premises in front of said hotel, bearing a sign reading as follows: "Enetai Inn unfair to organized labor, Building Service Employees Local

262." Plaintiff had received no previous notice of the meeting of the said Labor Council of May 27, 1946, nor of any contemplated action by said Council relating to his hotel or his employees, although at the aforesaid hearing of May 7, 1946, the president of said Central Labor Council definitely promised plaintiff that before any definite action was taken by said Central Labor Council plaintiff would be given advance notice, and a hearing before the entire membership of the said Council would be held.

[fol. 6] X

In furtherance of said conspiracy defendants caused pickets to be maintained continuously in front of his said premises, bearing the aforesaid sign, from May 29, 1946 to June 24, 1946, both dates inclusive, except for June 3rd, 4th, 5th and 6th, on which days no picket appeared.

XI

In the operation of said hotel plaintiff was and is dependent on his ability to purchase and obtain deliveries of fuel oil for heating the hotel building and heating water, and also on his ability to obtain pick-ups and deliveries of laundry for the use of the guests of the hotel. Prior to the picketing by defendants, plaintiff had mutually satisfactory arrangements with his fuel oil supplier and with the laundry in the City of Bremerton, which he had patronized for a substantial period of time, and deliveries of fuel oil and deliveries and pick-ups of laundry were made at plaintiff's hotel as plaintiff required. The drivers employed by said laundry and fuel oil supplier were all members of the Teamster's Union. A by-law of that union provides in substance that if any member crosses a picket line he is subject to a fine of $25.00 by the union. Defendants were all conversant with said by-law and knew at the time said picket line was established that the Teamster's Union drivers would refuse to cross the same for the purpose of making fuel oil deliveries and deliveries and pick-ups of laundry, and in fact, as soon as said picketing commenced, the said drivers did so refuse, solely because of the presence of the picket, by reason whereof plaintiff was thereafter unable to obtain such deliveries and pick-ups. The placing and maintenance of said pickets was a part of the conspiracy aforesaid and the purpose of defendants therein was to accomplish the

object of said conspiracy to damage and destroy plaintiff's hotel business by preventing deliveries of fuel oil and laundry, without which plaintiff could not operate.

[fol. 7]

XII

Notwithstanding said picketing, plaintiff was able, for a few days, to obtain some laundry supplies by having his own employees take the guest linen from his said hotel to the laundry and call for it when ready. Thereupon defendant Holbrook, acting in furtherance of said conspiracy, called the said laundry and notified the management thereof not to handle the Enetai Inn laundry. Said defendant also then and there exerted pressure on the employees of said laundry, all of whom were members of the Laundry Workers Union, not to work on the Enetai Inn laundry. Said laundry, and the members of the said Laundry Workers Union, yielded to said notice and pressure and thereupon refused to receive and to work upon the laundry from plaintiff's hotel solely because of the said notice and pressure. Thereafter plaintiff was able to obtain only limited supplies of laundry, in an amount inadequate to meet the needs of his said hotel business.

XIII

Continuously since the defendants first appoached plaintiff with reference to the organization of his employees, plaintiff has been willing and ready to negotiate with defendant union with reference to union recognition, proper and appropriate procedures relative to the solicitation of plaintiff's employees, present or future, for union membership, refraining from any discrimination against the union or union membership in the hiring of future employees, and any and all other appropriate subjects of agreement between the parties, the plaintiff being unwilling to negotiate regarding any contract involving the coercion by plaintiff of his employees, and plaintiff being further unwilling to recognize defendant union as the authorized representative of his employees for collective bargaining so long as none [fol. 8] of his employees are members of said union, and said union has not been designated by said employees as their representative for collective bargaining. Plaintiff has repeatedly notified defendants of his willingness and readiness as aforesaid, and has done everything reasonable and

possible to be done in order to avoid a controversy. Notwithstanding plaintiff's readiness and efforts as aforesaid, defendants have persisted in their aforesaid conspiracy, in their efforts to destroy plaintiff's business and in their demands that he coerce his employees.

XIV

By virtue of the wrongful acts and conspiracy of defendants as aforesaid, plaintiff's said hotel business was substantially damaged as follows: Following the curtailment of plaintiff's laundry supply, plaintiff necessarily declined to accept as guests of his hotel large numbers of persons who were otherwise acceptable as such and who applied to plaintiff to become such, solely for the reason that plaintiff did not have the guest linen with which to supply rooms for them, and such business was thereby lost to plaintiff. In some instances persons who had been satisfactory guests of plaintiff's hotel prior to the picketing, withdrew their patronage from plaintiff solely because of the picketing, and plaintiff is informed and believes, and therefore alleges that still other persons who would have become guests of said hotel were dissuaded therefrom by the presence of the said pickets.

XV

The business receipts from room rentals in plaintiff's said hotel when operating at capacity aggregates approximately $290.00 per day. Such aggregate amount is subject to a slight variation depending upon the number of double or multiple occupancies per room for the particular day. At no time since the said picketing commenced has plaintiff been compelled to close his hotel entirely, but continuously [fol. 9] since June 7, 1946, at which time the said laundry workers refused to receive or work upon the Enetai Inn laundry, there have been substantial room vacancies solely because plaintiff necessarily declined to accept prospective guests for the lack of linen to supply their rooms. The number of such room vacancies varied from day to day in accordance with the amount of guest linen available. During the sixteen-day period from June 7th to June 22, 1946 large numbers of prospective guests sought to register at plaintiff's hotel and were declined for the reasons aforesaid and plaintiff could, during such period have filled his said hotel to capacity had the linen been available. The

aggregate room rentals which would have accrued to plaintiff during such period, but for the picketing, would have been approximately the sum of $4640.00. Room rentals actually accrued for said period were only $3099.39, so that plaintiff lost room rentals in the aggregate amount of approximately $1540.61 during said period alone, solely because of the aforesaid wrongful acts and conspiracy of defendants. The cost of supplying guest linen to such prospective guests, had linen been available, would have been the sum of approximately $74.08, so that the loss in net profits suffered by plaintiff from June 7th to June 22nd inclusive, by reason of defendants' wrongful acts and conspiracy aforesaid, was the sum of $1466.53.

XVI

During the entire period of picketing plaintiff necessarily maintained his entire staff of employees in order to serve the guests in his hotel and during said entire period plaintiff's operating costs remained the same as before the picketing started, except in the case of the cost of laundry, which varied in accordance with the number of guests served.

[fol. 10]

XVII

The aforesaid loss and damage is still continuing and will continue as long as defendants persist in their wrongful acts and conspiracy. The precise amount of such lost profits subsequent to June 22nd has not yet been ascertained but plaintiff is informed and believes and therefore alleges that since June 22nd and up to the present time plaintiff has lost and is still losing profits at the rate of approximately $91.66 per day.

XVIII

Plaintiff is informed and believes that defendant union is insolvent and that the individual defendants are unable to respond in damages to the extent of the profits lost by plaintiff. If the said defendants are allowed to continue their wrongful acts and conspiracy plaintiff will suffer irreparable damage to the reputation and goodwill of his hotel.

XIX

By virtue of the aforesaid wrongful acts and conspiracy of defendants plaintiff has been deprived of his property

without due process of law, and has been deprived of the equal protection of the laws in violation of the first and fourteenth Amendments to the Constitution of the United States and in violation of Article I, Section III of the Constitution of the State of Washington, and unless said wrongful acts are restrained and enjoined by this court plaintiff will continue to be so deprived of his property in violation of each and all of the aforesaid constitutional provisions.

XX

Plaintiff has no adequate remedy at law

WHEREFORE plaintiff prays for judgment and relief against defendants as follows:

1. For judgment against defendants and each of them in the sum of $1466.53, being the damage accrued to June 22, 1946 as aforesaid;

[fol. 11] 2. That at the time of trial of this action plaintiff have leave to file an amended or supplemental complaint alleging the damages suffered by virtue of defendants' wrongful acts and conspiracy as aforesaid subsequent to June 22, 1946, and up to the time of trial, and that plaintiff have and recover judgment against defendants and each of them for such additional damages;

3. That plaintiff have judgment against said defendants and each of them for his costs and disbursements herein to be taxed;

4. That the defendants and each of them be restrained and enjoined by this court from further conduct and prosecution of said conspiracy, and that they and each of them be further restrained and enjoined from endeavoring to compel plaintiff to coerce his employers as aforesaid by picketing the said hotel premises of plaintiff, by declaring that plaintiff is unfair to organized labor, by boycotting plaintiff and his said hotel in any manner whatsoever, either directly or indirectly, and by urging and persuading others to withhold their patronage from plaintiff and his said hotel or to refuse to contract, deal with or make deliveries to plaintiff;

5. That plaintiff have and recover such other and further relief as to the court may seem just, equitable and proper.

Theodore S. Turner, Attorney for Plaintiff

Duly sworn to by W. L. Gazzan. Jurat omitted in printing.

[File endorsement omitted]

[fol. 12]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KITSAP COUNTY

ANSWER—Filed July 31, 1946

COMES now the following defendants, Building Service Employees International Union, Local 262, Sam Nance, William Morganson, Charles Meyer and E. W. Holbrook, and answer the complaint of the plaintiff, as follows:

I

Answering paragraph I of the Complaint the said defendants admit the same.

II

Answering paragraph II the said defendants admit that Building Service Employees International Union, Local 262, is a labor union and a voluntary and an unincorporated voluntary association; that E. W. Holbrook is secretary of the Central Labor Council of Bremerton, and the individuals named in said paragraph are residents of Kitsap County, Washington, but these defendants deny all other matters therein alleged.

III

Answering paragraphs III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, and XX, the said defendants deny the same in the whole thereof excepting that said defendants admit that an effort has been made [fol. 13] to organize some of the employees of the plaintiff, but deny that said effort has failed, admit that said hotel was placed on the "We do not patronize" list, and admit that there has been peaceful picketing intermittently beginning June 3, 1946.

Wherefore, these defendants pray that the said complaint be dismissed with prejudice and that they will have their costs and disbursements herein.

L. Presley Gill, Attorney for said defendants

Duly sworn to by William Morganson. Jurat omitted in printing.

[File endorsement omitted]

[fol. 14-17]

In the Superior Court of the State of Washington for Kitsap County

No. 22247

W. L. Gazzam, Plaintiff,

vs.

Building Service Employees International Union, Local 262, et al., Defendants.

Judgment and Order of Dismissal—Nov. 13, 1946

This matter coming on duly and regularly before the Hon. H. *E.* Sutton, for trial on the merits on October 22nd and 23rd; the plaintiff calling witnesses in support of the complaint and supplemental complaint and thereupon resting his case; the defendants interposing an oral motion to dismiss and after argument thereon; and the court being otherwise fully advised, now, therefore, It Is Hereby

Ordered, Adjudged and Decreed, That defendants' motion to dismiss for lack of evidence to sustain a cause of action, be and the same is *is* hereby granted;

Further Ordered, That judgment be rendered in favor of the defendants and for their costs to be taxed herein;

To the foregoing the plaintiff excepts and his exceptions are hereby allowed.

Done in Open Court this 13 day of Nov. 1946.

H. G. Sutton, Judge.

[File endorsement omitted]

[fol. 15] [Omitted]

[fol. 16] [Omitted]

[fol. 17] [Omitted]

[fol. 18]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 30198—En Banc

W. L. GAZZAM, Appellant,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER AND E. W. HOLBROOK, Respondents

OPINION OF FIRST APPEAL—Dec. 22, 1947

Plaintiff instituted this action for the purpose of securing a judgment for damages suffered by him as a result of picketing by defendant union. Also for the purpose of securing an injunction prohibiting the union from placing him on the unfair lst.

The cause was tried to the court sitting without a jury. After plaintiff had introduced his evidence, the court granted a motion for nonsuit, and dismissed the action.

Plaintiff has appealed to this court, and in so doing urges that the trial court erred in sustaining the defendants' challenge to the sufficiency of the evidence, and in entering judgment for defendants.

We summarize the essential facts as follows: Appellant is the owner of the Enetai Inn, a hotel situated in the city of Bremerton. The hotel has one hundred rooms, and seven cottages devoted for the most part to the accommodation of transient guests. During the month of May, and for some time prior thereto, appellant employed about fifteen persons, consisting of an engineer, janitor, bell boys, clerks, and a housekeeper. None of the employees belonged to respondent union. There was no dispute between appellant and his employees regarding wages, hours, or conditions of employment.

[fol. 19] Just prior to May 1, 1946, respondent William Morganson, and Charles Meyer, as representatives of respondent union, asked appellant if he was agreeable to making a contract with the union. As testified to by Mr.

Morganson, he and Mr. Meyer insisted that the contract with the union should be such as would require all of the employees to join the union. Appellant stated that his answer would depend upon the action of his employees. Appellant then went to Los Angeles for a short visit, and gave the union representatives permission to talk to the employees of the hotel. Upon his return to Bremerton, he met Meyer, who again requested that appellant sign a contract with the union. Appellant answered, "It is entirely up to my employees and you would have to consult them about that and see what the decision was."

May 2, 1946, appellant received a letter from the Central Labor Council of Bremerton, which read:

> "This Council has been requested by Building Service Employees Local No. 262 to place your hotel on the 'We do not patronize' list.
>
> "Before acceding to a request of this kind, it is the policy of the Council to call a meeting of both parties and attempt to arrange a settlement; accordingly such a meeting has been called for Tuesday, May 7th. at 7-30 P. M. in the office of the Council, upstairs in the old city dock.
>
> "Please be present or have a representative attend, as failure to attend will be construed to mean that you do not wish to bargain collectively with Organized Labor."

Appellant did not attend that meeting in person, but was represented by his attorney.

Appellant, at the request of respondent union, arranged a conference between the representatives of the union and his employees for May 10. He was not present at the meeting. However, the representatives of the union talked to the employees, explained to them the benefits to be derived from becoming union members, and asked them to join. The employees indicated that they did not desire to become members of the union. Following the meeting, appel- [fol. 20] lant received a letter from the Central Labor Council, which was as follows:

> "By action of the Central Labor Council, in regular meeting, Monday, May 27th, your hotel, the Enetai Inn, was placed on the 'We do not patronize' list."

May 31, 1946, which was after the receipt of the last mentioned letter, appellant's place of business was peacefully picketed by respondent union. The picketing continued until July 20, 1946. Shortly after the picketing started, a laundry which had cared for appellant's needs, and whose employees belonged to the union, refused to work for appellant. Appellant then attempted without success to do his own laundry. His position at that time is best expressed in the following letter, written by his attorney to Mr. John C. Merkel, attorney for the union:

> "Mr. Gazzam has authorized me to say that we are willing to continue negotiations with the representatives of Building Service Employees Local No. 262 for the purpose of reaching some satisfactory solution to the present controversy other than entering into a contract of the type which Mr. Meyers and yourself have thus far proposed. Mr. Gazzam is unwilling to negotiate with the Union concerning such a contract for the reason that this type of contract, as you, Mr. Meyers, and Mr. Morganson have all explained it, would force all the employees of the Enetai Inn to choose between joining the Union and being discharged, and these employees have already expressed their wish not to join this Union."

According to the evidence of Mr. Morganson, shortly after June 22, 1946, respondent Union's agents submitted another proposed agreement to appellant that read:

> "It is agreed by both parties hereto that the regular employees now working at the hotel shall not as a condition of continued employment be required to become members of the union. It is further agreed that any new employees who are hired to replace regular employees who have left through normal turnover or discharge shall as a condition of employment become members of the union. New employees shall be required to become members of the union within fifteen days after employment. It is understood that the employer shall have the voluntary right to either call the union for new employees or hire anyone whom he desires the only factor being that a condition of em- [fol. 21] ployment of new employees shall be that they come into the union within fifteen days. It is also agreed that the union shall be the bargaining

agent for both Union and non-union employees and that any wages hours and working conditions established for Union employees shall be paid also to the non-union employees."

The evidence submitted established without doubt the fact that Mr. Gazzam had suffered damages because of the picketing by respondent union. Appellant takes the position that the sole purpose of the picketing, and listing as unfair, was to compel him to coerce his employees to join the union against their will. Further, that coercion is contrary to the public policy of the state of Washington, as declared in the labor disputes act, chapter 7. Laws of 1933, Ex. Ses., (Rem. Rev. Stat. (Sup.) § 7612-2.) That declaration of the policy reads as follows:

"WHEREAS, Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections; . . ."

Respondents maintain that picketing by a union which does not include within its membership any employees is legal. They base their contention upon the right of free speech as guaranteed by the constitution of the United States.

Discrepancies creep into our decisions from time to time, and it is frequently necessary that a review be had of our opinions, at which time the cases may be analyzed, approved, or overruled, to the end that the law be made [fol. 22] certain, so that individuals and organizations,

and members of the bench and bar, may be advised of the holdings of this court. In cases like the one at bar, organized, non-organized labor, and employers, are entitled to definite decisions regarding their rights and liabilities, to the end that they may conduct their affairs as law-abiding citizens, without danger to themselves or their property. To that end we shall call attention to our most recent decisions.

The facts in Safeway Stores, Inc. v. Retail Clerks' Union, Local No. 148, 184 Wash. 322, 51 P. (2d) 372, decided in 1935, indicate that in order to get the employees of the Safeway stores to join the retail clerks' union, the latter marched pickets to and fro in front of the stores. Thereafter Safeway Stores instituted an action to permanently enjoin the union from such picketing, and also to collect damages for injury to its business as a result of the picketing. A permanent injunction was granted and damages allowed. It was also held that the 1933 labor disputes act was inapplicable to non-employee picketers, the term "labor dispute" not having been intended to include the type of picketing used by the union.

In Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 63 P. (2d) 397, decided by this court in 1936, the 1933 act was interpreted, and three sections (7, 8, and 9) were held unconstitutional. The court based its view upon the existence of an inherent right in the court of equity to issue injunctions in labor disputes. It will be noted that in this case a "labor dispute" within the meaning of the act was found to exist because employees of the defendant were involved. This court stated that the removal of jurisdiction [fol. 23] over such cases, except in the face of certain facts, and after following a certain procedure, was an unwarranted interference with equity's rights as guaranteed by the state constitution.

Following that case this court decided Kimbel v. Lumber & Saw Mill Workers Union No. 2575 (1937) 189 Wash. 416, 65 P. (2d) 1066). In this latter case it appears that the defendant union was attempting to unionize plaintiff's employees, several of whom already belonged to the defendant union. The pickets were employees of the plaintiff and remained at a considerable distance from plaintiff's place of business. No mention was made of the 1933 act. The

court's refusal to enjoin was based chiefly on the reasonable nature of defendant's demands, and the fact that the picketing was being done at a reasonable distance.

In Adams v. Building Service Employees International Union, Local No. 6, (1938) 197 Wash. 242, 84 P. (2d) 1021, this court again had before it a case in which the evidence showed that an outside union was seeking to organize the workers in the plaintiff's place of business, using pickets to lend strength to the battle. The court then cited the *Safeway* case, *supra*, to show that there was no labor dispute, and affirmed the superior court's decree which had permanently enjoined the union from picketing the employer's place of business.

The *Safeway* case was again the basis of a decision holding that picketing done by an outside union was unlawful, in Fornili v. Auto Mechanics' Union Local No. 297, etc. (1939), 200 Wash. 283, 93 P. (2d) 422.

The next case is that of United Union Brewing Co. v. Dave Beck (1939) 200 Wash. 474, 93 P. (2d) 772, which involved the activities of an outside union, and included picketing. Again the term "labor dispute" was held to [fol. 24] exclude that type of relationship mentioned in the *Safeway* case. The decision was based upon the holdings in the *Safeway* and *Adams* cases.

In Yakima v. Gorham, 200 Wash. 564, 94 P. (2d) 180, (1939), this court had before it a question concerning the constitutionality of an ordinance making picketing unlawful except by employees who had been employed three months or more at the place of the business picketed, and who had been so employed within sixty days of the period in which the acts were done. The appellant was a picket who had been carrying a "sandwich sign" pronouncing the employer unfair to organized labor, and although a member of a union whose members had been discharged for their membership, he was not, and had never been, an employee of the picketed employer. The court held that the ordinance was unconstitutional, and overruled several of our former cases by saying that they antedated the passage of the 1933 Act, and could not be considered as authority.

In Bloedel Donovan Lbr. Mills v. International Woodworkers of America, Local No. 46, 4 Wn. (2d) 62, 102 P.

(2d) 270, (1940) the national labor relations board had certified the majority union, and the minority union had picketed the employer's place of business, and this court decided that the picketing was improper, and that no labor dispute was involved. The court based its holding that the picketing was unlawful on the fact that it appeared that the sole purpose of the strike and picketing was to do away with the closed shop agreement entered into between the employer and the majority union under the authority of N. L. R. B.

Again in Shively v. Garage Employees Local Union No. 44, 6 Wn. (2d) 560, 108 P. (2d) 354, (1940), this court held that peaceful picketing of the place of business of an em- [fol. 25] ployer by a union did not include in its membership any employee of the employer, done for the purpose of persuading or coercing such employees to join the union against their will, was unlawful. This court further held in that case that the right of free speech is not an absolute right.

In Edwards v. Teamsters Local Union No. 313 (1941), 8 Wn. (2d) 492, 113 P. (2d) 28, an action denying an injunction against picketing was before this court. In that case the union called out its workmen and began to picket after an employer failed to comply with an agreement made with the union. This court held that a labor dispute existed, and that the picketing was lawful.

O'Neil v. Building Service Employees International Union, Local No. 6 (1941), 9 Wn. (2d) 507, 115 P. (2d) 662, is the next case which has to do with picketing. In that case plaintiff operated two apartment houses with the assistance of her family and without the help of outside employees. Defendant union peacefully picketed the apartment houses in an effort to compel the plaintiff to join the union. The employer-employee relationship did not exist between the disputants, but this court denied injunctive relief, saying that the right of peaceful picketing was guaranteed by the constitution.

Following the above case, we find that of S & W Fine Foods, Inc. v. Retail Delivery Drivers and Salesmen's Union, Local No. 353 (1941), 11 Wn. (2d) 262, 118 P. (2d) 962. That case involved picketing by the defendant union of the S & W Fine Foods warehouse, because their sales-

men, who were perfectly satisfied with their situation, had refused to join the union. The *Swing* case (American Federation of Labor v. Swing, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568) was held to be directly in point, and this court denied plaintiff any relief.

[fol. 26] In Weyerhaeuser Tbr. Co. vs. Everett Dist. Council of the Lbr. & Sawmill Workers, 11 Wn. (2d) 503, 119 P. (2d) 643, (1941), the defendant union was in the minority (12 employees out of a total of 1,277). It sought to induce the employer to enter into a contract with it, although to do so would be in violation of the Wagner act, since the employer was already under contract with the bargaining agency of the majority. The election had not yet been certified by the national labor relations board, but certification was not necessary before the employer could violate the Wagner act by dealing with minorities. The resulting picketing was not strictly peaceful because of the fact that some threats were made which deterred entrance to the mill owned by the employer. This court held that the picketing by a minority union prior to certification by the N. L. R. B. of the election, was legal.

In State ex rel. Lumber & Sawmill Workers v. Superior Court for Pierce County (1945), 24 Wn. (2d) 314, 164 P. (2d) 662, this court denied an injunction where it was found that an employer pursuant to an order of the national labor relations board recognized another union as bargaining agent. In that case the picketing was for the purpose of urging the employees of the recognized union to pursue a course of action similar to that which the picketing union was following in a campaign waged by both unions for a wage increase throughout the industry which was common to both unions. This court held that the picketing was an exercise of free speech, and relied upon the case of Thornhill v. Alabama, 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736.

Our most recent case on the question involving picketing, is that of Swenson v. Seattle Central Labor Council, 127 Wash. Dec. 183, 177 P. (2d) 873, (1947). In this case there [fol. 27] was no employer-employee relationship between the picketing union and the employer. There was a jurisdictional dispute between rival unions, and after one union had been certified, but before the agreement was signed, the union with no employees began to picket. This court, as we will point out later, held that there was no labor dispute.

It will be noted that fourteen cases have been decided by this court since the passage of the act of 1933. These cases are not in harmony. In the *Safeway, Adams, Fornili, United Union Brewing Co. Shively, Bloedel Donovan,* and *Swenson* cases, this court held that peaceful picketing of an employer's place of business was unlawful in those cases in which the employees were not members of the union, and the purpose of the picketing was to force the employees to join the union, or to compel the employer to enter into a contract which would in effect compel his employees to become members of the union.

In the *O'Neil* and *S. & W. Fine Food-, Inc.* cases, the court ignored its former cases to which we have referred, and held that any peaceful picketing was lawful.

The other cases cited did not directly involve questions presented here. The leading case cited with approval on many occasions and never overruled, is Safeway Stores, Inc. v. Retail Clerks' Union, Local No. 148, 184 Wash. 322, 51 P. (2d) 372. The reasons given in that case for holding picketing similar to that present in the instant case to be unlawful, are so clearly expressed that we quote and again approve the following excerpt:

> "The vital, controlling question at issue here is plain and easy of solution. It in no way pertains to the relations between the appellant, a merchant, and its employees. For aught that appears, they are content and satisfied, among themselves. On the contrary, this is a lawsuit between appellant and a third party—a labor union that does not include in its membership any employee of the appellant. What right have the respondents to insist or demand, at the threat or cost of the destruction of appellant's business, or at all, that appellant ask, urge or coerce, directly or indirectly, its employees, who are at liberty to do as they please, to join respondents' organization? Of course, there is nothing unlawful in hiring clerks or salesmen who are not members of a local organization such as the re- [fol. 28] spondent; and any attempt, like that in this case, to deny or cripple one's right to do so is an unwarranted attempt by individuals or persons to unreasonably interfere with the freedom of the liberty and property right of contract."

Aside from the statute, the *O'Neil* and *S & W Fine Foods, Inc.* cases are wrong in principle, and are expressly overruled.

In *Swenson v. Seattle Central Labor Council, supra*, the facts were: The employer employed non-union labor. At different times, for several years, he had been requested by union representatives to take certain actions in order to bring the union question to the attention of his employees. Upon his refusal to obey the request, and after the union was unable to secure the employees to join their organization, a picket line was placed at the employer's place of business. Passing upon the question, identical with the one presented here, we stated:

> "There could not have been a dispute 'between one or more employees or associations of employees and one or more employees or associations of employees,' as provided in the act, because here, no members of the picketing unions were employees of the Sweden manufacturing company. A jurisdictional dispute between rival unions can become a 'labor dispute' provided the union members involved are employees of the same company, and provided further that no exclusive bargaining agency has been set up or provided for. Here, there was no labor dispute."

We then discussed all of the important cases cited and relied on by the litigants in the case at bar, including Carpenters and Joiners Union of America v. Ritter's Cafe, 315 U. S. 722, 86 L. Ed. 1143, 63 S. Ct. 807. We considered the constitutional questions presented, and made clear the rule that should be applied in picketing cases, as follows:

> "The United States supreme court has, by these cases, established this rule: Peaceful picketing is an exercise of the right of free speech. Organized labor has the right to communicate its views either by word of mouth or by the use of placards. This is nothing more nor less than a method of persuasion. But when picketing ceases to be used for the purpose of persuasion—just the minute it steps over the line from persuasion to coercion—it loses the protection of the constitutional guaranty of free speech, and a person or persons injured by its acts may apply to a court of equity for relief."

That case, as heretofore pointed out, decided in line with the Safeway case that coercive picketing is not protected by either our state or Federal constitution.

[fol. 29] May 19, 1947, the supreme court of Colorado decided the case of Denver Milk Producers v. International Brotherhood of Teamsters, etc., ... Colo. Dec. ...., 183, P. (2d) 529. That case involved facts similar to those presented here—peaceful picketing of an employer. The employer who was picketed did not have any employees who belonged to the union. The Colorado court quoted with approval all of our *Swenson* opinion which had to do with the law relative to peaceful picketing, such as we have presented in the case at bar. The court then held that an act of the legislature, known as the labor peace act, was constitutional, valid, and enforceable. They further held that there was no merit in the contentions of the defendants that their constitutional rights under the first, thirteenth, and fourteenth amendments to the Federal constitution would be violated if the injunction against picketing was made permanent.

In 1933, the same year the legislature passed our public policy act, the general assembly of Indiana passed an act commonly known as the anti-injunction act, chapter 12, Acts 1933, §§ 40-501 to 40-514, Burns' 1933, §§ 10155 to 10168, Baldwin's 1934. That act used the identical words of our public policy act.

In 1939 the supreme court of Indiana decided the case of Roth v. Local Union No. 1460 of Retail Clerks Union, 216 Ind. 363, 24 N. E. (2d) 280. The facts in that case were that the plaintiff owned a small grocery store and employed three persons. The defendant union coerced the employees into joining its organization by threatening them that if they did not do so, the store would be picketed, and that they would lose their jobs. Thereafter, the employees refused to strike, and resigned from the union, whereupon the plaintiff's store was peacefully picketed. The plaintiff was at peace with his employees at the time of the [fol. 30] pieketing, and none of them belonged to, or wanted to join or belong to the union. The trial court found that plaintiff had performed all obligations imposed upon him by law. In passing upon the question presented, the supreme court of Indiana said:

"To ascertain the intent of the legislative body that enacted a statute is the fundamental rule for its judicial construction. When the purpose of an act is expressed in clear and unambiguous terms, this must be accepted as the solemn declaration of the sovereign. The public policy of the state is a matter for the determination of the Legislature and not for the courts. The statute here under consideration declares that it is the public policy of this state that the individual unorganized worker shall be free to decline to associate with his fellows and that he shall be free from interference, restraint, or coercion on the part of his employer. This must mean that no labor union may demand that an employer require his employee to join such union, because no employer has the right to require an employee to join or refrain from joining a labor union. Any person or group which undertakes to coerce an employer to do that which is contrary to the express public policy of this state thereby undertakes to compel the performance of an unlawful act. The lawful weapon of peaceful picketing may not be utilized to accomplish such an unlawful purpose. It is quite immaterial that the things done to bring about the unlawful purpose were not *per se* unlawful. This is our interpretation of our statute.....

"The facts are not here in dispute. The court found from the evidence (which is not before us) that the plaintiff had performed all obligations imposed upon him by law; that he was at peace with his employees; that none of them belonged or wanted to belong to the picketing union; and that the object of the picketing complained of was to compel the plaintiff, against his desire, to sign a closed shop contract, whereby his employees would be compelled to join the union against their will or be discharged, which, as we have already pointed out, the plaintiff was prohibited from doing by positive law. Under these circumstances, the picketing was wrongful and oppressive and it ought to have been enjoined."

Our act and that of Indiana are identical; the facts in each case are alike. The reasoning and conclusions of the supreme court of Indiana are unanswerable. We adopt them as quoted above.

We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.), § 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved.

[fol. 31] Appellant was entitled to recover any damages he may have suffered as a result of the picketing. A study of the evidence reveals that it was not sufficient to prove that any damages were suffered by appellant as a result of having been placed on the union's unfair list.

The judgment in this case is reversed with instructions to proceed with the trial in accordance with the views expressed in this opinion.

Simpson, J.

We concur:

.....

.....

Steinert, J.

Jeffers, J.

.....

.....

.....

Hill, J.

I concur in the result. However, I do not believe that a union can be enjoined from merely placing an employer on the unfair list.

Schwellenbach, J.

[fol. 32] MILLARD, J. (dissenting)—*O'Neil v. Building Service Employees Int. Union*, 9 Wn. (2d) 507, 115 P. (2d) 662, 137 A. L. R. 1102, is controlling. It is in harmony with *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568, *Cafeteria Employees Union v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, (this is subsequent to *Carpenters Union v. Ritter's Cafe*, 315 U. S. 722, 86 L. Ed. 1143, 62 S. Ct. 807) and other opinions of the United States supreme court which are binding on this court. See, also, *Yakima v. Gorham*, 200 Wash. 564, 94 P. (2d) 180, *S & W Fine Foods, Inc. vs. Retail Drivers, etc. Union*, 11 Wn. (2d) 262, 118 P. (2d) 962, *State ex rel. Lumber, etc. v. Superior Court*, 24 Wn. (2d) 314, 164 P. (2d) 662, and *Park & Tilford Import Corp.*, 27 Cal. (2d) 599, 165 P. (2d) 891.

The opinions of the United States supreme court which we have heretofore followed, hold that the constitutional guaranty of freedom of speech may not be abridged by judi-

cial policy of a state to forbid resort to peaceful persuasion through picketing. We are concluded by the opinions of the United States supreme court, the latest of which is *Cafeteria Employees Union v. Angelos, supra.* That case was decided subsequent to *Carpenters Union v. Ritter, supra,* on which the majority opinion is based.

The judgment should be affirmed.

Millard, J.

[fol. 33] No. 30198

BEALS, J. (dissenting)—In my opinion, the supreme court of the United States has declared the law governing the questions presented on this appeal, and the law, as so declared by the supreme court of the United States, requires that the judgment appealed from be affirmed. I, accordingly, dissent from the conclusion reached by the majority.

Beals, J.

We concur

Robinson, J.
Mallery, C. J.

[fol. 34]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Friday, March 26, 1948

No. 30198

Kitsap County No. 22247

W. L. GAZZAM, Appellant,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER and E. W. HOLBROOK, Respondents

JUDGMENT—March 26, 1948

This cause having been heretofore submitted to the Court upon the transcript of the record of the Superior Court of Kitsap County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 26 day of March,

A. D. 1948, on motion of Theodore S. Turner, Esquire, of counsel for appellant, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby reversed with instructions to proceed with the trial in accordance with the views expressed in the opinion; and that the said W. L. Gazzam have and recover of and from the said Building Service Employees International Union, Local 262, Sam Nance, William Morganson, Charles Meyer and E. W. Holbrook, the costs of this action taxed and allowed at Four Hundred forty-three and 67/100 ($443.67) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Of record in Journal 37 at page 631 in the office of the Clerk of the Supreme Court of the State of Washington.

[fol. 35]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

No. 22247

W. L. GAZZAM, Plaintiff,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER and E. W. HOLBROOK, Defendants.

COMPLAINT—Filed June 29, 1946

Comes now the plaintiff and for cause of action against defendants alleges:

I

Plaintiff is a resident of Kitsap County, Washington and is, and at all times herein mentioned has been, the owner and operator of a hotel known as the Enetai Inn in the City of Bremerton in said county and state. Said hotel contains one hundred rooms for the accommodation of transient guests. In the operation of said hotel plaintiff at all

times herein mentioned has employed approximately fifteen employees, consisting of desk clerks, a house-keeper, an engineer, maids and bell boys.

II

The defendant, Building Service Employees International Union, Local No. 262 is now and at all times herein mentioned has been, a labor union and an unincorporated voluntary association organized under the labor laws of the State of Washington, and maintains its office in said City of Bremerton. Plaintiff knows neither the number nor identity of the members of defendant union, but alleges on information and belief that said members are too numerous to be joined as parties herein. The defendant, Sam Nance, is president of said union, defendant William Morganson, is secretary and treasurer thereof and defendant, [fol. 36] Charles Meyer, is an organizer and business agent of said union. Defendant E. W. Holbrook is secretary of the Central Labor Council of Bremerton. All of said individual defendants reside in Kitsap County, Washington.

III

At no time mentioned herein has any of plaintiff's employees been a member of defendant union, nor has defendant union been authorized to represent any of said employees or bargain for them regarding wages, hours or conditions of employment or for any other purpose. There is not now, nor has there been at any time, any dispute between plaintiff and any of his employees regarding wages, hours or conditions of employment.

IV

Sometime prior to the month of May, 1946, the defendants informed plaintiff that they desired to organize plaintiff's employees by securing their membership in defendant union. Plaintiff replied that defendants might freely solicit his employees on the hotel premises during their hours of work. Plaintiff is informed that thereupon the defendants did solicit such membership from said employees, but were in each instance refused. Thereafter defendants demanded of plaintiff that he sign a contract with said union, the exact terms of which plaintiff is unable to

state, but which, as explained to plaintiff, would require plaintiff's employees to join defendant union or be discharged. Plaintiff refused to enter into such a contract.

V

Sometime prior to May 27, 1946, the exact date being unknown to plaintiff, defendants wrongfully, unlawfully and maliciously entered into a conspiracy among themselves and with divers other persons to plaintiff unknown, to force plaintiff wrongfully and unlawfully to coerce his said employees to join defendant union, or in the alternative to destroy plaintiff's said hotel business. The coercion [fol. 37] to be exercised by plaintiff upon his employees, which was one of the objects of said conspiracy as aforesaid, was to consist of a contract between plaintiff and defendant union providing that all of plaintiff's employees would join defendant union, regardless of their wishes in the matter, or be discharged. Such coercion was and is wrongful and unlawful in this, that it would be in violation of the right of said employees to be free to decline to associate with their fellows, and would curtail and destroy their right to full freedom of association, self-organization and designation of representatives of their own choosing for collective bargaining, and would further destroy their right to be free from interference, restraint or coercion of their employer in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining, or other mutual aid or protections, all of which rights and freedoms are guaranteed to such employees by the public policy of the State of Washington as declared in Laws of Washington, Extraordinary Session of 1933, Page 10, Section 2.

VI

In furtherance of said conspiracy defendants caused to be filed with the Central Labor Council of Bremerton a complaint against plaintiff and a request that plaintiff's said hotel be placed on the "we do not patronize list," published and maintained by said Central Labor Council for the information and guidance of the several affiliated unions in the Bremerton area, of which there is a substantial number. The purported ground of said complaint was that plaintiff was unfair to organized labor, whereas defen-

dants then and there well knew that plaintiff was not unfair to organized labor, that no dispute existed between him and his employees, and that no dispute or controversy [fol. 38] existed between plaintiff and any labor union whatsoever, other than the alleged dispute with defendant union consisting of plaintiff's refusal to coerce his employees as aforesaid.

VII

Pursuant to said complaint and request, the defendant Holbrook, purporting to act as secretary of said Labor Council, scheduled a hearing thereon to be held at the office of said Central Labor Council on May 7, 1946, and requested plaintiff to attend in person or by representative. Plaintiff being unaware of said conspiracy, was present by his attorney. At said hearing the defendants renewed their aforesaid demand that plaintiff coerce his employees by entering into a contract with the defendant union containing provisions as aforesaid. Plaintiff then and there objected to such coercion on the ground that it would destroy the freedom of his said employees to join a labor organization of their own choosing or to refuse to join any, and would be contrary to the public policy of the State of Washington as hereinabove more fully set forth. At the same time plaintiff expressed his willingness to negotiate with said union regarding any matter not involving coercion of his employees. Defendants did not accept plaintiff's said offer to negotiate on any other ground, but requested a further opportunity to address plaintiff's employees in a body, which request the plaintiff readily granted.

VIII

Pursuant to such request plaintiff called a meeting of his said employees at the Eretai Inn on May 10, 1946, which was attended also by all of the individual defendants, as well as four members of the Central Labor Council of Bremerton. Plaintiff was not present but was represented by his attorney. At said meeting the defendants explained to said employees, fully and without interruption or hin- [fol. 39] drance, all of the advantages claimed by them to accrue from membership in defendant union, and invited and urged said employees to join. No reply was made by or on behalf of plaintiff to said arguments and explanation of

defendants, but plaintiff's attorney simply stated that plaintiff was expressing no opinion on the matter and that said employees were to be free to decide for themselves. At the conclusion of said remarks, arguments and comments by defendants, all persons not employees of plaintiff retired from the room, leaving said employees entirely to themselves, whereupon they voted not to join defendant union. As announced by the representative of said employees, the vote was as follows: one in favor of joining the union, one undecided, and nine against joining defendant union.

IX

In furtherance of said conspiracy, defendant Holbrook, purporting to act as secretary of said Labor Council, on or about May 29, 1946, notified plaintiff by letter dated as of said date, that on May 27, 1946 said Central Labor Council had taken formal action placing plaintiff's said hotel on the "we do not patronize list." Plaintiff received said letter on the same day, and simultaneously defendants caused a picket to patrol the premises in front of said hotel, bearing a sign reading as follows: "Enetai Inn unfair to organized labor, Building Service Employees Local 262." Plaintiff had received no previous notice of the meeting of the said Labor Council of May 27, 1946, nor of any contemplated action by said Council relating to his hotel or his employees, although at the aforesaid hearing of May 7, 1946, the president of said Central Labor Council definitely promised plaintiff that before any definite action was taken by said Central Labor Council plaintiff would be given advance notice, and a hearing before the entire membership of the said Council would be held.

[fol. 40]

X

In furtherance of said conspiracy defendants caused pickets to be maintained continuously in front of his said premises, bearing the aforesaid sign, from May 29, 1946 to June 24, 1946, both dates inclusive, except for June 3rd, 4th, 5th and 6th, on which days no picket appeared.

XI

In the operation of said hotel plaintiff was and is dependent on his ability to purchase and obtain deliveries of fuel oil for heating the hotel building and heating water,

and also on his ability to obtain pick-ups and deliveries of laundry for the use of the guests of the hotel. Prior to the picketing by defendants, plaintiff had mutually satisfactory arrangements with his fuel oil supplier and with the laundry in the City of Bremerton, which he had patronized for a substantial period of time, and deliveries of fuel oil and deliveries and pick-ups of laundry were made at plaintiff's hotel as plaintiff required. The drivers employed by said laundry and fuel oil supplier were all members of the Teamster's Union. A by-law of that union provides in substance that if any member crosses a picket line he is subject to a fine of $25.00 by the union. Defendants were all conversant with said by-law and knew at the time said picket line was established that the Teamster's Union drivers would refuse to cross the same for the purpose of making fuel oil deliveries and deliveries and pick-ups of laundry, and in fact, as soon as said picketing commenced, the said drivers did so refuse, solely because of the presence of the picket, by reason whereof plaintiff was thereafter unable to obtain such deliveries and pick-ups. The placing and maintenance of said pickets was a part of the conspiracy aforesaid and the purpose of defendants therein was to accomplish the object of said conspiracy to damage and destroy plaintiff's hotel business by preventing deliveries of fuel oil and laundry, without which plaintiff could not operate.

[fol. 41] XII

Notwithstanding said picketing, plaintiff was able, for a few days, to obtain some laundry supplies by having his own employees take the guest linen from his said hotel to the laundry and call for it when ready. Thereupon defendant Holbrook, acting in furtherance of said conspiracy, called the said laundry and notified the management thereof not to handle the Enetai Inn laundry. Said defendant also then and there exerted pressure on the employees of said laundry, all of whom were members of the Laundry Workers Union, not to work on the Enetai Inn laundry. Said laundry, and the members of said Laundry Workers Union, yielded to said notice and pressure and thereupon refused to receive and to work upon the laundry from plaintiff's hotel solely because of the said notice and pressure. Thereafter plaintiff was able to obtain only limited

supplies of laundry, in an amount inadequate to meet the needs of his said hotel business.

XIII

Continuously since the defendants first approached plaintiff with reference to the organization of his employees, plaintiff has been willing and ready to negotiate with defendant union with reference to union recognition, proper and appropriate procedures relative to the solicitation of plaintiff's employees, present or future, for union membership, refraining from any discrimination against the union or union membership in the hiring of future employees, and any and all other appropriate subjects of agreement between the parties, the plaintiff being unwilling to negotiate regarding any contract involving the coercion by plaintiff of his employees, and plaintiff being further unwilling to recognize defendant union as the authorized representative of his employees for collective [fol. 42] bargaining so long as none of his employees are members of said union, and said union has not been designated by said employees as their representative for collective bargaining. Plaintiff has repeatedly notified defendants of his willingness and readiness as aforesaid, and has done everything reasonable and possible to be done in order to avoid a controversy. Notwithstanding plaintiff's readiness and efforts as aforesaid, defendants have persisted in their aforesaid conspiracy, in their efforts to destroy plaintiff's business and in their demands that he coerce his employees.

XIV

By virtue of the wrongful acts and conspiracy of defendants as aforesaid, plaintiff's said hotel business was substantially damaged as follows: Following the curtailment of plaintiff's laundry supply, plaintiff necessarily declined to accept as guests of his hotel large numbers of persons who were otherwise acceptable as such and who applied to plaintiff to become such, solely for the reason that plaintiff did not have the guest linen with which to supply rooms for them, and such business was thereby lost to plaintiff. In some instances persons who had been satisfactory guests of plaintiff's hotel prior to the picketing, withdrew their patronage from plaintiff solely because of the picketing,

and plaintiff is informed and believes, and therefore alleges that still other persons who would have become guests of said hotel were dissuaded therefrom by the presence of the said pickets.

XV

The business receipts from room rentals in plaintiff's said hotel when operating at capacity aggregates approximately $290.00 per day. Such aggregate amount is subject to a slight variation depending upon the number of double or multiple occupancies per room for the particular day. At no time since the said picketing commenced has plaintiff been compelled to close his hotel entirely, but continuously [fol. 43] since June 7, 1946, at which time the said laundry and laundry workers refused to receive or work upon the Enetai Inn laundry, there have been substantial room vacancies solely because plaintiff necessarily declined to accept prospective guests for the lack of linen to supply their rooms. The number of such room vacancies varied from day to day in accordance with the amount of guest linen available. During the sixteen-day period from June 7th to June 22, 1946 large numbers of prospective guests sought to register at plaintiff's hotel and were declined for the reasons aforesaid and plaintiff could, during such period have filled his said hotel to capacity had the linen been available. The aggregate room rentals which would have accrued to plaintiff during such period, but for the picketing, would have been approximately the sum of $4640.00. Room rentals actually accrued for said period were only $3099.39, so that plaintiff lost room rentals in the aggregate amount of approximately $1540.61 during said period alone, solely because of the aforesaid wrongful acts and conspiracy of defendants. The cost of supplying guest linen to such prospective guests, had linen been available, would have been the sum of approximately $74.08, so that the loss in net profits suffered by plaintiff from June 7th to June 22nd inclusive, by reason of defendants' wrongful acts and conspiracy aforesaid, was the sum of $1466.53.

XVI

During the entire period of picketing plaintiff necessarily maintained his entire staff of employees in order to serve the guests in his hotel and during said entire period plain-

tiff's operating costs remained the same as before the picketing started, except in the case of the cost of laundry, which varied in accordance with the number of guests served."

[fol. 44]

XVII

The aforesaid loss and damage is still continuing and will continue as long as defendants persist in their wrongful acts and conspiracy. The precise amount of such lost profits subsequent to June 22nd has not yet been ascertained but plaintiff is informed and believes and therefore alleges that since June 22nd and up to the present time plaintiff has lost and is still losing profits at the rate of approximately $91.66 per day

XVIII

Plaintiff is informed and believes that defendant union is insolvent and that the individual defendants are unable to respond in damages to the extent of the profits lost by plaintiff. If the said defendants are allowed to continue their wrongful acts and conspiracy plaintiff will suffer irreparable damage to the reputation and goodwill of his hotel.

XIX

By virtue of the aforesaid wrongful acts and conspiracy of defendants plaintiff has been deprived of his property without due process of law, and has been deprived of the equal protection of the laws in violation of the first and fourteenth Amendments to the Constitution of the United States and in violation of Article I, Section III of the Constitution of the State of Washington, and unless said wrongful acts are restrained and enjoined by this court plaintiff will continue to be so deprived of his property in violation of each and all of the aforesaid constitutional provisions.

XX

Plaintiff has no adequate remedy at law.

WHEREFORE plaintiff prays for judgment and relief against defendants as follows:

1. For judgment against defendants and each of them in the sum of $1466.53, being the damage accrued to June 22, 1946 as aforesaid;

[fol. 45] 2. That at the time of trial of this action plaintiff have leave to file an amended or supplemental complaint

alleging the damage suffered by virtue of defendants' wrongful acts and conspiracy as aforesaid subsequent to June 22, 1946, and up to the time of trial, and that plaintiff have and recover judgment against defendants and each of them for such additional damages;

3. That plaintiff have judgment against said defendants and each of them for his costs and disbursements herein to be taxed;

4. That the defendants and each of them be restrained and enjoined by this court from further conduct and prosecution of said conspiracy, and that they and each of them be further restrained and enjoined from endeavoring to compel plaintiff to coerce his employees as aforesaid by picketing the said hotel premises of plaintiff, by declaring that plaintiff is unfair to organized labor, by boycotting plaintiff and his said hotel in any manner whatsoever, either directly or indirectly, and by urging and persuading others to withhold their patronage from plaintiff and his said hotel or to refuse to contract, deal with or make deliveries to plaintiff;

5. That plaintiff have and recover such other and further relief as to the court may seem just, equitable and proper.

Theodore S. Turner, Attorney for Plaintiff

Duly sworn to by W. L. Gazzam. Jurat omitted in printing.

[File endorsement omitted]

[fol. 46]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

No. 22247

W. L. GAZZAM, Plaintiff,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER and E. W. HOLBROOK, Defendants

ANSWER—Filed July 31, 1946

COMES now the following defendants, Building Service Employees International Union, Local 262, Sam Nance,

William Morganson, Charles Meyer and E. W. Holbrook, and answer the complaint of the plaintiff, as follows:

I

Answering paragraph I of the Complaint the said defendants admit the same.

II

Answering paragraph II the said defendants admit that Building Service Employees International Union, Local 262, is a labor union and a voluntary and an unincorporated voluntary association, that E. W. Holbrook is secretary of the Central Labor Council of Bremerton, and the individuals named in said paragraph are residents of Kitsap County, Washington, but these defendants deny all other matters therein alleged.

III

Answering paragraphs III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX and XX, the said defendants deny the same in the whole thereof excepting that said defendants admit that an effort has been [fol. 47] made to organize some of the employees of the plaintiff, but deny that said effort has failed, admit that said hotel was placed on the "We do not patronize" list, and admit that there has been peaceful picketing intermittently beginning June 3, 1946.

Wherefore, these defendants pray that the said complaint be dismissed with prejudice and that they will have their costs and disbursements herein.

L. Presley Gill, Attorney for said Defendants

Duly sworn to by William Morganson. Jurat omitted in printing.

[File endorsement omitted]

[fol. 48]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KITSAP COUNTY

No. 22247

[File endorsement omitted]

W. L. GAZZAM, Plaintiff,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER and E. W. HOLBROOK, Defendants

SUPPLEMENTAL ANSWER—Filed May 27, 1948

Come now the defendants in the above entitled case and further answer the Complaint of the plaintiff, by way of this Supplemental Answer, as follows:

I

That all of the acts performed by the defendants herein were done by them under the protection of the Constitution of the United States, the First and Fourteenth Amendments thereto.

WHEREFORE, these defendants having fully answered the Complaint of the Plaintiff, pray that the same be dismissed and that they recover their costs and disbursements herein.

L. Presley Gill, Attorney for Defendants

STATE OF WASHINGTON,
County of King

E. W. HOLBROOK, being first duly sworn, upon oath deposes and says:

That I am one of the above named defendants and make this verification for and on behalf of said defendants; that I have read the within and foregoing Supplemental Answer, know the contents thereof, and verily believe the same to be true.

E. W. Holbrook

Subscribed and Sworn to before me this 26 day of May, 1948.

L. Presley Gill, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 49]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

No. 22247

W. L. GAZZAM, Plaintiff,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER and E. W. HOLBROOK, Defendants

REPLY TO SUPPLEMENTAL ANSWER—Filed May 27, 1948

Comes now the plaintiff above named and for reply to the Supplemental Answer of the defendants herein denies each and every allegation therein contained.

Theodore S. Turner, Attorney for Plaintiff

Duly sworn to by W. L. Gazzam. Jurat omitted in printing.

[File endorsement omitted]

[fol. 50]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KITSAP COUNTY

W. L. GAZZAM, Plaintiff,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER and E. W. HOLBROOK, Defendants

No. 22247

DECREE AND PERMANENT INJUNCTION—Sept. 20, 1948

This cause having come regularly on for trial before the undersigned Judge of the above entitled Court May 27, 1948, on the complaint, supplemental complaint and second supplemental complaint of the plaintiff, the answer and supplemental answer of defendants, and the separate answers of the defendants Morganson and Holbrook, and the plaintiff's reply to the supplemental answer; and the plaintiff appearing in person and by his attorney, Theodore S. Turner, the defendant Morganson appearing in person and

by his attorney, Curtis H. Coons, and all defendants appearing by their attorney, L. Presley Gill, and the defendant Holbrook appearing also in person; and the defendants having moved to strike the second supplemental complaint of the plaintiff and the Court, after argument, having granted said motion with respect to paragraph II of said complaint and denied said motion as to paragraph I thereof; and evidence having been introduced the cause was thereafter continued from time to time until September 2, 1948, on which date the trial was resumed; thereupon, in addition to the foregoing appearances, Merrill [fol. 51] Wallace, Esquire, was associated as additional attorney for the plaintiff, and defendant Nance appeared in person and by his attorney, John C. Merkel; and further evidence having been introduced, and the cause having been argued, and the Court being fully advised,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS, to wit:

1. That the plaintiff do have and recover judgment against the defendants, and each of them, for damages for the wrongful picketing alleged in plaintiff's complaint in the sum of Five Hundred Dollars ($500,00) together with his costs and disbursements herein to be taxed, except as to defendant Holbrook, who is hereby dismissed;

2. The defendants, and each of them, are hereby restrained and enjoined from endeavoring to compel plaintiff to coerce his employees to join the defendant union or to designate defendant union as their representative for collective bargaining, by picketing the hotel premises of plaintiff, viz., the Enetai Inn, Bremerton, Washington, by boycotting plaintiff or the said Enetai Inn in any manner whatsoever, whether directly or indirectly, and by urging and persuading others to withhold their patronage from the plaintiff and said Enetai Inn or to refuse to contract, deal with or make deliveries to plaintiff or to said Enetai Inn.

DONE IN OPEN COURT this 20 day of September, 1948.

H. G. Sutton, Judge

[File endorsement omitted]

[fols. 52-57] [Omitted]

[fol. 58]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 30823—En Banc

W. L. GAZZAM, Appellant,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER AND E. W. HOLBROOK, Respondents

OPINION—July 1, 1949

PER CURIAM.—The appeal here present is from a second trial of the issues involved in Gazzam v. Building Service Employees International Union, Local 262, 29 Wn. (2d) 488, 188 P. (2d) 97. In that case we reversed a judgment of nonsuit, and instructed the court to retry the case. In obedience to that instruction, the case was tried again, and a judgment entered in favor of Gazzam. Mr. Gazzam and the Union then appealed. The judgment provided for recovery of five hundred dollars as damages occasioned by the picketing of Mr. Gazzam's place of business. The trial court refused to allow damages caused by the fact that Gazzam's place of business had been placed on the unfair list.

The members of this court have been unable to agree. Four judges were of the view that the judgment should be modified to the extent of allowing appellant Gazzam recovery of damages occasioned by picketing and by being placed on the unfair list. Three judges were of the opinion that recovery should only be allowed for damages occasioned by the picketing, and two judges were of the opinion that no damages should be allowed either for picketing or placing on the unfair list.

Inasmuch as a majority of the court has not reached a definite decision, the judgment of the trial court will stand affirmed.

[fol. 59]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 30823

KITSAP COUNTY No. 22247

W. L. GAZZAM, Appellant,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER, Respondents.

JUDGMENT—Aug. 12, 1949

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Kitsap County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 12 day of August, A. D. 1949, on motion of Bassett & Geisness, of counsel for respondents, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Of record in Journal 39
at page 140 in the office
of the Clerk of the Supreme
Court of the State of
Washington

[fols. 60-67] [Omitted]

[fol. 68] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. A]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 30823

W. L. GAZZAM, Appellant,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER and E. W. HOLBROOK, Respondents and Cross-Appellants

ORDER CONCERNING STATEMENT OF FACTS AND EXHIBITS

August 22, 1949

It appearing that Bassett & Geisness, attorneys for respondents and cross-appellants, and Theodore S. Turner,

attorney for appellant, have stipulated that the original statements of facts and the original exhibits on file in this cause and in cause No. 30198 of the causes of this court, may be certified to the Supreme Court of the United States in lieu of certified copies of said documents, it is hereby

ORDERED that the Clerk of this Court send to the Clerk of the Supreme Court of the United States, along with the record on petition for certiorari, the original statements of facts and exhibits on file in this cause and in cause No. 30198 of the causes of this court in lieu of certified copies of said documents, and that the Clerk of the Supreme Court of the United States be requested to return said documents to the Clerk of this Court upon the disposal of the proceedings in that Court, said return to be made at the expense of Bassett & Geisness.

Dated this 22nd day of August, 1949.

Geo. B. Simpson, Chief Justice

[File endorsement omitted]

[fol. B]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

No. 30823

STIPULATION CONCERNING STATEMENTS OF FACTS AND EXHIBITS—August 22, 1949

It is hereby stipulated by and between the parties hereto, through their undersigned attorneys of record, that the Clerk of the above entitled Court may certify to the Supreme Court of the United States the original statements of facts and original exhibits on file in the above cause and in cause No. 30198 of this court.

Dated at Seattle, Washington, this 19th day of August, 1949.

Theodore S. Turner by W. H. Hutchinson, Attorney for Appellant.

L. Presley Gill.

Bassett & Geisness, Attorneys for Respondents and Cross-Appellants.

[File endorsement omitted]

[Part I] [Omitted]

[fols. 1-2]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

No. 22247

W. L. GAZZAM, Plaintiff,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER and E. W. HOLBROOK, Defendants

STATEMENT OF FACTS

BE IT REMEMBERED that on the 22nd of October, 1946, at the hour of 10:00 A.M., the above entitled cause came on for trial before the Honorable H. G. Sutton, one of the judges of the above entitled court at the court house in Port Orchard, county of Kitsap, state of Washington; without a jury; the plaintiff appearing by his attorney, Theodore S. Turner; the defendants and defendant union appearing by their attorney, L. Presley Gill;

WHEREUPON, the following proceedings were had and testimony given, to-wit:

Mr. Turner: If the Court please, has the Court had an opportunity to read the pleadings?

The Court: I just read them over this morning, hurriedly.

PLAINTIFF'S OPENING STATEMENT

Mr. Turner: I won't go into detail regarding the allegations of the complaint. Complaint is made rather full but Your Honor has read the complaint. I think it would probably be sufficient for me to make a very general statement about the nature of the action and the nature of the plain-
[fol. 3] tiff's evidence. The action is for damages and for an injunction against the defendant union and against several individuals, the first three of whom are officials of the defendant union, and Mr. Holbrook is the secretary of the Central Labor Council and is joined because of his personal activities which tie in with the wrongful action of the defendant union and its officers. The plaintiff operates the Enetai Inn, a hotel in Bremerton, and had approxi-

mately fifteen employees, all of whom were non-members of the union. Mr. Morganson and Mr. Meyer approached Mr. Gazzam with a request to sign a contract with the union. He allowed them to freely solicit his employees for membership in the union. The employees did not become members as a result of the solicitation. The defendants, Morganson and Meyer, renewed the request for Mr. Gazzam to sign a contract with the union and he declined on the ground he would not force his employees to join. That resulted in the defendant union filing the complaint against the Enetai Inn before the Central Labor Council of Bremerton. Hearing was held and the issue again was presented whether or not Mr. Gazzam would sign a contract with the union, by the terms of which all of his employees would either become members of the union or lose their jobs. The plaintiff, acting through myself as his attorney, declined to yield to that position of the union. And in a further effort to iron the matter out, the union asked for a hearing before all the employees and union members, jointly, with an opportunity to express the arguments on the union side to these employees. The plaintiff arranged a time and place for such a meeting at the hotel during working hours, and the employees were assembled and members of the union and a committee from the Central Labor Council appeared. [fol. 4] That will be gone into in some detail and the plaintiff's evidence will show that Mr. Meyer and Mr. Holbrook both addressed these employees at length and presented fully their union arguments. There was no reply to those arguments by the plaintiff. Mr. Gazzam, himself, was not personally present. I was there. And at the conclusion of the remarks by the union, all of the union committee and myself, retired, and the employees took a vote by themselves and voted not to join the union. That vote was announced to both sides, who were waiting upstairs in the lobby of the hotel. The next thing that happened was that the Enetai Inn was declared unfair to organized labor, at a union meeting, (without further notice to plaintiff and without an opportunity by the plaintiff to be heard), and pickets appeared in front of the hotel. The plaintiff then invoked the aid of the State Department of Labor and Industries mediation, and there was conversation between the state labor conciliator and

myself, representing Mr. Gazzam, and Mr. Merkel, who was then representing the union. And the plaintiff was given the period of five days to consider how far he would go to yield to union demands. Before the expiration of five days, I wrote a letter stating Mr. Gazzam's position (and that will be introduced), that he would not coerce the employees against their will to join the union and that would extend to future employees. He was interested in getting sufficient help, and if a competent man wanted to go to work for him, he would not force that man against his will to join the union. Also, he expressed a willingness to continue negotiations with the union in regard to some other type of contract, not forcing that result. Without answer to my letter, pickets were put in [fol. 5] front of the hotel and at no time has the hotel been taken off the unfair list. It has been there continuously since May 29th, and is on that list today, as far as I know.

The Court: Is it still being picketed?

The Witness: No, the pickets went off, the latter part of July. The exact date, I don't have. It is expected the defendants will produce those actual dates. Do you have those, Mr. Gill? Do you have a list of the dates of picketing?

Mr. Gill: The dates of picketing? The picketing started May 31st, Your Honor, and the last date of the picketing was July 20th. However, the picketing was not continuous.

Mr. Turner: Do you have a list of the days of actual picketing?

Mr. Gill: We have that available.

The Court: We'll get that later. I just wanted a general idea.

Mr. Turner: The effect of this picketing upon the hotel was this: The hotel caters largely to transient trade and that requires a large supply of linens. Ever since the war or, at least, in late years, it's been difficult to buy new linens. The hotel had just a short supply. Consequently, a daily laundry service is necessary to the operation of such a hotel. When the pickets came there, the laundry drivers refused to cross the picket line and the hotel necessarily refused many guests because of the inability

to get linen. At first, the hotel was able to keep up to some extent by carrying the soiled linens in Mr. Gazzam's private car to the laundry where it was processed and Mr. Gazzam would send for it again in his private car and pick [fol. 6] it up. And then the laundry workers, because the Enetai Inn was on the unfair list, refused to process the laundry. And from then on, the hotel had to close off a large number of rooms. He was at all times able to get some laundry but it was quite a difficult situation for quite awhile. He had not enough linen to handle the trade that stops there. The result was a very marked falling-off in the gross receipts. The measure of damages is loss in net profit. We have prepared the books here and we will show those. I might say here in connection with those dates, it is almost impossible to arrive at a mathematically precise figure because the room values were all fluctuating somewhat. For example, one room might be capable of holding two or three people, but if a person takes the room alone and does not desire others in it, sometimes it is impossible to make arrangements to accommodate more than one person in that room. Another party of two or three might come along and occupy the same room, so that room values will fluctuate from day to day, even though full. And then when trying to figure the precise business the hotel was turning away, it can be done only approximately, recognizing that there are these slight fluctuations, due to the personal affiliation and desires of the guests. But we will show that substantial numbers of rooms had to be closed entirely, although tenants were available, because of linen, because of strike. For the purpose of giving the court a reasonable idea of the amount of lost profits, we have prepared a comparative study of room values before and during the strike or during the picketing to show that the falling-off went on over a period and that shows a very reliable figure, which would be accurate within a few [fol. 7] dollars—that is, in estimating the falling-off of business. Well, at the time this picketing started, there were quite a few ships in the harbor, and many men coming in to be discharged, here. The wives of many of them accompanied them. It was normally a time when the hotel would have operated to full capacity. By the latter part of July—July 20th, when the picketing stopped, most of these ship arrivals had ceased. The summer tourist trade

was beginning to slack somewhat, so that by the end of this period when the picketing was over, it was no longer possible to immediately jump back to having full houses. At the present time, there is not enough transient trade to fill the house. There has been a loss of some business throughout the entire period, due to the listing of the Enetai Inn as unfair. There are quite a few people who regularly travel and who would normally stop at the Enetai Inn, who are labor sympathizers or at least of such contact with labor that they are dependent upon labor's good will, that they dare not stop at a house on the unfair list. And that business is regular throughout the year. Travelling salesmen come in periodically and work the surrounding territory. And those salesmen and others who are in travelling occupations, feel that way, and are lost as guests of the hotel during the entire period when the Enetai Inn is on the unfair list. The basis of the Plaintiff's position is this: The strike, itself, was for the sole purpose of exerting economic pressure on the plaintiff and employer to exert economic pressure upon employees to join the union. It would have provided in that contract that he would hire only union people, and so far as present employees are concerned, they would have had a period of [fol. 8] time within which to make up their minds whether or not to join the union. At the end of that time, they would have to be replaced by union people. The plaintiff takes the position that for him to make a contract of that sort with the union would amount to putting economic pressure and coercion upon the employees in favor of joining the union. They had already, by the time of the picketing of the strikers, declared emphatically they didn't wish to join this union. And to force them to choose between joining the union or losing their jobs was pressure that he did not desire to exert and which we submit was unlawful. The State Legislature passed an act granting the laborer the right of freedom from coercion on the part of the employers of labor or their agents, in the selection of agents of their own choosing. And this statute, also, grants the laborer the right to refrain from joining a union, if he so desires. That statute, in other words, guaranteed to the worker, complete freedom in the exercise of his right to *chose* whether to join or not to join and if to join—what union. Therefore, the pressure of the union upon the plain-

tiff, in this case, was to compel him to do an unlawful act. Therefore, the union's purpose was unlawful, and the purpose behind the picketing and unfair listing was unlawful. Therefore, it should be enjoined and the plaintiff is entitled to recover damages resulting from that tort.

[fol. 9] DEFENDANT'S OPENING STATEMENT

Mr. Gill: May it please the Court, we admit that we have the Enetai Inn on the unfair list. We admit we have picketed their establishment by the display of a sign, "Enetai Inn unfair to organized labor." There has been no allegation in the complaint that the picketing was not peaceful. The facts, as will be briefly shown by our testimony—and very likely, by Mr. Gazzam's, is that in the latter part of March, there was a meeting between Mr. Gazzam, the owner of the Enetai Inn on one side, and several representatives of the union on the other, with regard to a contract with the so-called "union shop" or "closed shop" clause, and with regard to wages, hours, sick leave, holiday pay, vacation. At *at* that meeting, there was discussion on all these subjects. Mr. Gazzam contended that he couldn't pay those wages, couldn't grant sick leave, and couldn't operate the hotel profitably under that contract. The testimony will show that he contended that no hotel could operate under union conditions. He had had a labor dispute over working conditions, however, and Mr. Gazzam did give the union representatives an opportunity to come on the property and approach the workers. We admit that none of them joined the union. There was a vote taken about May the 10th, at which time, nine employees voted against the union and one voted in favor of the union and one was undecided. The testimony will show that at that meeting, the general manager over these people was present, and I think that testimony will show that she unduly influenced the others, having made arrangements for the voting and being present at the time of voting. The testimony will show that Mr. Gazzam told the employees that he had four or five or six maids—that if the union came [fol. 10] in, the payroll would be cut down to two or three maids and he would let the rest of them go. I say, the testimony may show that. The testimony further will

show that the Central Labor Council received a letter from the Building Service Employees Union, asking that the firm be placed on the unfair list. And on May 7th, the executive board had a meeting and at that meeting on May 7th, Mr. Turner was present and Mr. Turner was spokesman for Mr. Gazzam at that executive board meeting. There was some suggestion that the controversy might be settled by taking the vote of the employees. The executive board said, "All right. We'll do anything that will offer an opportunity for settlement." This vote was taken on May 10th, as a result of that meeting. The Central Labor Council then requested an answer of Mr. Turner, to be furnished within a certain time, if the dispute was not fixed by that time; and if the dispute was not settled, stated that the hotel would be put on the unfair list. That, in fact, was done, May 27th. A letter from the union was sent to Mr. Gazzam, which didn't arrive until two days later, informing him the hotel was placed on the unfair list. And on May 29th, on the same day, the pickets first appeared. It is our position, and the testimony will show, that the pickets didn't stop all the tenants coming into the hotel—that it did stop some of them—

The Court: You don't admit that they forced them—

Mr. Gill: No, just the fact that they stopped them and talked to them. In other words, just advertising. The picketing was peaceful. Some people decided to do business with Mr. Gazzam and so our testimony will show that there were some deliveries made. There were some tenants that continued to stay at the Enetai Inn. We'll [fol. 11] show that the employees went through the picket line. We'll show that the employees bought supplies and materials and brought them into the inn without any restraint or restrictions by the union. I may say, very briefly, that the complaint is based upon the Safeway case, which is very familiar to the courts. In the Safeway case, the state supreme court held that in spite of the definition of the term, "labor dispute," there was no dispute unless one or more employees was a member of the labor union. I know Your Honor has had occasion to consider it on previous occasions. I have a number of authorities, which Your Honor can study over at Your Honor's leisure time. The complaint is based upon this

Safeway case, and in the last case by our state supreme court, State ex rel Lumber and Saw mill Workers—that case was decided last December, Your Honor,—the A. F. of L. went and picketed the plants that the C.I.O. had contracted, and the C.I.O. sued the A. F of L. to enjoin them from picketing the plants, and that was the last case of the Supreme Court, Wash. Decisions, Volume 124, No. 6., and in that opinion, the Safeway Stores case was overruled by the Yakima case, etc. (Argument, reading from Vol. 125, No. 6 of Washington Decisions.)

> "It is unnecessary to review the opinions of this court prior to O'Neil vs. Building Service Employees, 9 Wash. 2nd 507 . . . in which we hold that, by virtue of the right of free speech guaranteed by the Federal constitution, a labor union has the legal right peacefully to picket the place of business of a person who has no employees, for the purpose of coercing and compelling, against his will, such lone person or individual proprietor to join the picketing union; and that injunction will not lie to restrain the union from such picketing."

So we say that under the present ruling in the Supreme Court of the State of Washington, the picketing is authorized.

The Court: Even though the employees—none of them—belong to the picketing union?

[fol. 12] Mr. Gill: That is right.

The Court: In other words, you contend you have a right to advise the public that the labor organizations consider the employers unfair because their employees don't belong to that union?

Mr. Gill: Yes. But I do desire to move to dismiss at the close of plaintiff's case.

Mr. Turner: If the Court please, we would like to file an amended or supplemental complaint, alleging damages accruing up to the time of trial. I have prepared such additional complaint or supplemental complaint. Counsel and I spoke about it on the phone yesterday, I believe. I had to leave the amounts blank, depending upon Mr. Stickney, who is the auditor of Mr. Gazzam's business to

fill it in. I received a call from Mr. Stickney, this morning, that he had a breakdown in his car at Shelton and would be here as soon as possible. He had to get the car fixed in order to get here, and I can't fill in those blanks until he does get here. I'm perfectly willing to serve counsel an unsigned copy. The figures haven't *been* put in there and can't be, until Mr. Stickney is here.

Mr. Gill: I told counsel yesterday I couldn't agree to the supplemental complaint. I hadn't seen it, and it might raise some issue that the union is not prepared to defend itself on.

The Court: Give him a copy of the supplemental complaint, now.

Mr. Turner: For the record, this is an unsigned copy with blanks showing as the amounts.

The Court: The damages left blank, necessarily.

Mr. Turner: I'll call Mr. Gazzam.

[fol. 13] W. L. GAZZAM, plaintiff herein, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Turner:

Q. State your name, please.
A. W. L. Gazzam.
Q. You reside in Bremerton?
A. Yes.
Q. How long have you lived there?
A. I became a resident of Bremerton in June, 1925. That is twenty-one years, last June.
Q. Was it about that time that you bought the Enetai Inn?
A. Yes, that is the date we bought the Enetai Inn.
Q. You are the sole owner and proprietor of the Enetai Inn?
A. Yes.
Q. That is not a corporation?
A. Not a corporation.
Q. Will you briefly describe the nature of the Enetai Inn—the type of business it caters to, the number of rooms,

and give the court a general idea of the nature of its business.

A. We have one hundred rooms in the hotel. We have seven cottages on the waterfront behind the hotel, which is part of the hotel, and rented to transients—and I think one of them is rented permanently because they were there before and we let them stay. We have largely a transient business because the Navy asked that we be declared "essential" and that relieved us of the situation of taking care of a lot of permanents and gave us more transients. We have only five permanents in the house, now. The rest are transients.

Q. The building is a three-story building, is it?

[fol. 14] A. It is a five-story building in rear and a three-and-one-half-story on top of—

Q. Will you compare the Enetai Inn with the other hotels in Bremerton—just in a general way, with respect to what hotel is generally regarded as the leading hotel?

A. We are generally regarded and so advertised as the leading hotel in Bremerton and the only one which was declared "essential" by the Man-power Commission, I think. I have that file in Seattle. At the request of the Navy, we were declared "essential."

Q. During the last two years, has that business been operated at a profit or loss or what, during the past few —two years?

A. Yes, It's been operated at a profit, Sir.

Q. There is nothing speculative as to the business as existed in May of 1946?

A. No, sir.

Q. That is accurate. About how many exployees did you have in May of 1946 in the hotel business?

A. My impression was that there were fifteen—might have varied one above or one below.

Q. State the general nature of those employees.

A. Some of the staff are clerks and we call them on the staff. There is an engineer and as assistant janitor—he is called a "janitor," and two bell boys—sometimes it varies with bell boys—two bell boys—once in a while have three, not often.

The Court: Maids?

The Witness: We had seven. I think its been reduced to six, now.

Q. There is a housekeeper, also?

[fol. 15] A. Well, the front office clerks very often operate as clerk and housekeeper jointly.

Q. In May of 1948, were any of those employees members of the defendant union?

A. No, sir, they were not.

Q. Have you had, at any time, any employees who were members of the defendant union, so far as you know?

A. I don't know that we had any members of the defendant union.

Q. That is the Building Service Employees.

A. No, there were not any of my employees, members of the defendant union. We very frequently had union men.

Q. Those would be in other connections?

A. Yes.

Q. For example, if you had construction work done, it might very well be a union man?

A. Yes, we never discriminate.

Q. At a time, some years ago, you operated a restaurant and you had some union members, then?

A. Yes.

Q. There is no restaurant operated in this hotel?

A. Not for a number of years—not since the beginning of the war. We feed our staff.

Q. You don't feed the public?

A. Don't feed any public for revenue, whatever.

Q. Has there been any dispute between you and your employees from May, 1946 down to date, regarding wages, hours, or conditions of employment?

A. No, sir.

Q. Will you state whether or not in April of 1946 or prior to April, sometime—anyhow prior to the month of May of this year, will you state whether or not Mr. Mor-

[fol. 16] ganson and Mr. Meyer, the defendants in this case, came to see you with reference to organization of your employees?

A. They did, Sir.

Q. Will you tell the Court the date, if you recall? Or, if you don't recall the date, why say so. And tell what was said and done.

A. I don't remember the date, itself. I should have kept a diary—sometime about that time, I would say.

Q. It was prior to May?

A. Yes.

Q. And what was said at that time?

A. They asked me if I were agreeable to making a contract with the union. I said that would depend upon my employees—but we were quite pleasant in our interview—there wasn't any ugliness, but I felt it was entirely up to the employees. They had been in and out and I knew that and I said I was going away to Los Angeles on a short trip and would be delighted to give them the run of the house while away.

Q. Then you went on your trip and then on your return, did you again see either one?

A. I saw one, Mr. Meyer. I got in, late in the evening and the next morning or the next day—I wouldn't say what hour it was,——

Q. What was said?

A. It was almost immediately on my return that he came to see me,——

Q. What was said and done at that time?

A. I just asked him how he succeeded. He said they were waiting for me to sign up when I came back and that they would sign up if I would sign up. I said, "It is [fol. 17] entirely up to my employees and you would have to consult them about that and see what the decision was."

Q. Did he say whether or not he had obtained any applications from employees?

A. I asked him and he said he hadn't any signatures.

Q. You were referring to applications in the defendant union, were you?

A. Yes.

Q. Did you at that time refuse to sign the contract he wished you to sign?

A. I don't remember that he offered a contract at that time.

Q. It was referred to in conversation?

A. I told him—I also gave him my word when he left that I would not speak to any of my employees in regard to the subject, leaving them entirely free to decide whether they would join or not join.

Q. Did you, in fact, talk to them at any time?

A. Afterwards. I was asked afterwards what I wanted.

Q. Did you make the initial approach or not?

A. No.

Q. You did not approach the matter with any of your employees?

A. No, sir.

Q. Well, this second conversation with Mr. Meyer was prior to the time you had received any written communication from the Central Labor Council?

A. Yes, that is my recollection.

Q. Mr. Gazzam, I show you Plaintiff's Exhibit "A" for identification and ask you if you received that on or about the date it bears?

A. Yes.

Q. That is, May the 2nd?

[fol. 18] A. Yes.

Mr. Turner: I will offer it in evidence.

The Court: Any objections?

Mr. Gill: No objection, Your Honor.

The Court: It may be admitted.

(Whereupon, letter dated May 2nd, 1946 from E. W. Holbrook, Sec'y of the Central Labor Council of Bremerton to W. L. Gazzam, was received in evidence and filed as Plaintiff's Exhibit "A".)

Q. Following the receipt of that letter, Mr. Gazzam, did you get in touch with me and ask me to appear there?

A. Yes.

Mr. Turner: I beg your pardon, Your Honor, I didn't hear if that exhibit was admitted.

The Court: It has been admitted.

Mr. Turner: Because the next question relates to that.

The Court: All right.

Q. Following your receipt of that letter, Plaintiff's Exhibit "A", Mr. Gazzam, you got in touch with me and asked me to represent you at the hearing mentioned in that letter?

A. Yes.

Q. And I reported to you after attending the hearing?

A. Yes.

Q. Following that hearing, were you requested—by the way, you were not present at the hearing before the Central Labor Council on the 7th?

A. No, sir.

Q. Following that hearing, were you requested to arrange a conference room for a meeting between representatives of the union and of your employees?

A. Yes.

[fol. 19] Q. You made that arrangement?

A. I did, Sir.

Q. And that was on or about May 10th of this year?

A. As I tell you, Sir, I don't remember the exact date.

Q. But it was all about this time?

A. Yes.

Q. Were you present at that meeting?

A. No, sir.

Q. Following that, you were advised of the vote taken by your employees with respect to the union?

A. Yes.

Q. Following that meeting with the employees and the union, did you receive any notice of a further hearing before the Central Labor Council, inviting you to be present?

A. I don't recall that, Mr. Turner.

Q. You now recall what was the next communication that you got from the Central Labor Council?

A. I wouldn't.

Q. I show you Plaintiff's Exhibit "B" for identification and ask you whether or not you received that on or about the date it bears?

A. Yes, I received that on the same day that it was written, May 29th.

Q. What is it?

A. Just a letter from the post office.

Mr. Turner: I will offer that.

Mr. Gill: No objections.

The Court: It may be admitted.—Plaintiff's Exhibit "B".

(Whereupon, letter dated May 29, 1946 from E. W. Holbrook, Sec'y of the Central Labor Council of Bremerton to W. L. Gazzam, was received in evidence and filed as Plaintiff's Exhibit "B".)

[fol. 20] Q. Had you received any notice prior to your getting Plaintiff's Exhibit "B" of any hearings before the Central Labor Council, or were you given any opportunity to be present?

A. No, sir.

Q. Your only notice of such a hearing that you received, is Exhibit "A"—that is notifying you of the hearing on the 7th of May?

A. Yes.

Q. On the same day that you received Plaintiff's Exhibit "B", what else occurred?

A. I don't recall.

Q. Well, I will ask you this: Do you recall when the pickets appeared in front of your hotel?

A. Well, that was a little later, Sir. That was a day or two after that; the pickets appeared unexpectedly to me.

Q. Well, now, what do you recall—do you recall the wording of the sign of the pickets?

A. Well, I think I can tell you, perhaps with errors and omissions. "Enetai Inn—unfair to organized labor. Local Union ...."—and the number, I don't remember. It was the Building Service Union. That was on the front and back.

Q. On the front of the picket and on the back of the picket?

A. Yes.

Q. And he patrolled in front of the front entrance?

A. Yes.

Q. Then how long was the picket there?

A. Intermittently, Sir. I don't remember. Sometimes he was there for two hours—four hours—and I think several times, eight hours. I don't think he was there longer than eight hours at any one stretch.

Q. And there were some days that he didn't come there at all?

[fol. 21] A. Well, quite a number of days. For a few days, I think he was very regular. I don't remember the exact number of days, though.

Q. Briefly, what was the effect of the picketing in front of the hotel upon the guests of the hotel?

A. It showed a falling off, Sir. There is no question about it. But as to the exact amount—that matter—your have determined that.

Q. I am not referring to the amount. I am referring to the operation. What effect did the picketing produce?

A. For a time it was perceptible but not terribly burdensome.

Q. I will direct your attention to the deliveries of laundry. Did the pickets have any effect on the deliveries of laundry?

A. Yes, it did have an effect on the deliveries of laundry.

Q. Prior to the picketing, what had been the laundry situation in the hotel? How did you handle it?

A. Prior to picketing, the laundry delivered our laundry and picked up our laundry. They picked up our laundry and delivered it within ten or twelve hours—sometimes, twenty-four hours afterwards.

Q. About how often did it come?

A. Every day except Sunday, Sir.

Q. How large a supply of guest linen for rooms in the hotel did you have at the time?

A. We had all that was possible for us to buy during the war. We would have liked to have had double that quantity but we couldn't buy it. It wasn't on the market.

Q. Did you have a large supply so that you could run a period of time without getting laundry service?

A. Twenty-four hours—about. We were limited in our laundry because we couldn't buy linens toward the end of the war.

[fol. 22] Q. So when the pickets appeared, the laundry refused to pick up and deliver the laundry?

A. That was, I presume, a day later or within that first day's period, probably. It was at that time they refused to pick up the laundry.

Q. Did you do anything personally about it?

A. We sent the laundry up in *my car* for several days.

Q. Did you get in touch with the proprietor of the laundry?

A. Yes.

Q. For what purpose?

A. To know if he would accept our laundry. And he did accept it temporarily.

Q. And how did you arrange this thing? You say you took it up in your car?

A. I sent it up in my car.

Q. You didn't personally take it down, I see.

Q. You might state your age for the record?

A. Eighty-four, next birthday.

Q. And when will that be?

A. Next June.

Q. So at the time this happened, you were almost eighty-three—just prior to your eighty-third birthday?

A. Yes.

Q. And then when the laundry was done, I presume your employees would call for it and take it back?

A. Yes.

Q. You recall how long that arrangement continued?

A. It was several days, Mr. Turner, but I couldn't give you the exact time.

Q. Then what happened to that arrangement?

A. One day my driver, who did a good deal of the bell boy work and was a good driver, notified me that he was [fol. 23] satisfied that they weren't going to do his laundry that day. So I called up the laundry and they said I'd have to come and get the laundry or send for it—that they couldn't do it—that they had been notified not to do our laundry.

Q. You mean you had to come and get your laundry?

A. Yes.

Q. You mean it had not been processed?

A. It had not been processed and we had to take it back up and have it processed.

Q. What did you do then about the laundry?

A. I bought a "wash yourself"—"wash-your-clothes"—a little operation going on the East Bremerton side. And I sent help over and we did our own laundry—washed the clothes several days at a great disadvantage.

Q. And then were you able to get any regular laundry to take your washing?

A. Later I did, Sir, yes.

Q. But at this particular time, were you able to get any commercial laundry to handle it?

A. No, sir, we couldn't. They would not touch it.

Q. Why, Mr. Gazzam?

A. They said they had been notified not to do our laundry.

Q. Did they say by whom?

A. No, sir, they didn't say by whom, but they had received notice not to do our laundry.

Q. Then, during this period, were you able to obtain an adequate supply of guest linen to supply the needs of all the guests?

A. No, sir, we were unable to keep a number of rooms open because we could not supply clean laundry, so we blocked them off.

Q. During this time, would you state what the demand for rooms was?

[fol. 24] A. At that time, Sir, we were receiving a good many of these ships that were to be deactivated—were in for repairs, and we could have filled our rooms up at that time.

Q. Were you able to get any laundry deliveries to your hotel by regular commercial laundries at any time while the pickets were there?

A. No, Sir, not while the pickets were on, we could not.

Q. So you bought the equipment over in Manette and were able to get some laundry washed at Manette?

A. At that time, it was limited because we had no facilities for drying or mangling—ironing.

Q. What did you do about the drying of them—handling of them?

A. We hung them all over the house in our larger rooms and even though they were occupied by the Red Cross at that time. We kept hanging them up to dry and we had to explain to guests about the laundry being unironed and as long as they knew they were washed, they'd take them rough-dry, necessarily. We didn't have sufficient linen to comply with the needs of the house, so we'd block off certain rooms for a period of time.

Q. Later on, your linen supply increased, somewhat, did it?

A. Yes.

Q. You recall the period of time when it did increase?

A. No, I could not, Sir. I don't handle those books.

Q. That would be up to the people who do that?

A. Yes.

Q. With reference to your duties in the hotel, Mr. Gazzam, what duties, if any, do you discharge in the operation of that hotel?

A. Just as owner, Sir, and I am there and they consult me from time to time on general policies and things of that kind. For instance, we used to pack two, three and four [fol. 25] people in a room. Today we are delighted to have one or two, only, because of the falling off in business, the last two or three months. Of course, I don't know until

I look at the room numbers the next day, what we have had the night before. They did consult me about blocking off some of the rooms because they lacked the laundry.

Q. In general, do you know what is going on in the hotel?

A. Yes, I try to, unless I am away.

Q. You live right there in the hotel?

A. Yes, the policy of the hotel is controlled by me.

Q. But the actual operation—detailed operation——

A. It is handled by my staff—staff clerks. I have one assistant manager and he is the night manager and handles the detail and sleeps in the daytime. A clerk is on the desk from 8:00 o'clock in the morning until 4:00 in the afternoon. And from 4:00 until 12:00, midnight, my assistant manager has control.

Q. The presence of the pickets also prevented oil deliveries—fuel oil deliveries?

A. Yes.

Q. But, actually, during the entire period, you were able, somehow or other, to get enough oil to keep your boiler running, so you are not claiming any damage on account of blocking of the oil deliveries?

A. I was blocked by it but I was not damaged by failure to get oil.

Q. The point is, that although the Union Fuel Oil truck was blocked, you were able at other times to get a sufficient supply of oil and were not damaged by the fuel oil being blocked?

A. That is correct.

Q. Did you suffer any loss of business from guests who declined to stay at the hotel because it was on the unfair list?

A. Yes.

[fol. 26] Q. Will you refer to that a little more in detail? Describe what the loss amounted to.

A. There were several salesmen who were members of the Teamsters Union and they came to us regularly every week. We had salesmen who would come every other week for four or five days. We lost a great deal by that—four or five a week, probably, who would have been there four or five days.

Q. When you say that some of the salesmen came regularly, you are referring to the period prior to the pickets?

A. Yes.

Q. And have those people returned since the pickets left?

A. Not all of them, Sir.

Q. Some of them have?

A. A minority of them. A majority of them made other contacts. They don't come back at all.

Q. Can you give the court some idea of the number of such people—I am talking about those that appear to have stayed away—who have stayed away since the hotel was placed on the unfair list?

A. Yes, salesmen of meat concerns, salesmen of hardware concerns—people who would be in direct violation of what they call their "union rules." They wouldn't cross our lines while we were unfair. Some have come back, although we are still listed as unfair. Some haven't.

Q. How many of them that you used to have as regular guests, are there, who have not come back?

A. That, I am unable to tell you but it amounts to probably four or five a week.

Q. Four or five of those customers have left. And those people would probably stay an average of how many days?

A. From two to four—some of them, five days. Some [fol. 27] would come on Monday or Tuesday and remain until Friday or Saturday. And from our hotel they would go to Poulsbo—some went as far as Gig Harbor—some went as far as Lilliwaup and back to us that evening—and Kingston. They made a number of small towns and came back to us that night.

Q. Will you give the court some notion about the tourist trade, Mr. Gazzam?

A. After school closed down, we had a considerable tourist trade. It was unexpected. We didn't realize we were going to get any tourist trade and we got quite a bit of tourist trade.

Q. Were you able to accommodate them?

A. Except when the pickets were on, Sir. We'd have been able to accommodate them.

Q. Was there any time when you were unable to accommodate them?

A. During the time that we were short of linen, Sir, we turned away a great many. I recall one night when I was told there were forty-seven rooms blocked off.

Q. The number of rooms that were vacant each night will appear from the daily reports?

A. Yes, we keep a daily record of our rooms—of each room.

Q. The night that the forty-seven rooms were blocked off,——

A. That is my recollection—it may be anywhere in the forties.

Q. What was the cause of that blocking off?

A. Failure to get linen sufficient to cover the beds—sheets, pillow slips, towels. Failure to get the linen laundry processed.

Q. Now, during the strike, for what period of time, Mr. Gazzam, during the picketing and unfair listing, could you have filled the house if you had been able to get linen—guest linen?

A. Well, at that time, Sir, the largest ships were coming in and the larger carriers were coming in and we could [fol. 28] have had a full house at that time.

Q. When you say, "at that time," which time do you mean?

A. The beginning of the picketing until it was discontinued and toward the end of the picketing, there wasn't so many ships as there were in the beginning.

Q. You said awhile ago, the tourist trade started early in June. About what date did it end or start to fall out?

A. That was intermittent with us. We had a great deal of tourist trade but we couldn't handle it because we were unable to. They were travelling to Seattle, mostly, and they got a great deal more than we did, but we were surprised at the number.

The Court: The question was: When did it start to fall off?

The Witness: Fall off? I didn't hear that. I would say it fell off perceptibly toward the end of July. There was not a tremendous amount of tourist trade then, but quite a bit.

Q. After the picketing was discontinued, on or about July 20th, did any of the guests that you had turned away because of the lack of guest linen, come back to the hotel?

A. No, sir, a number of them got placed elsewhere and were satisfied. We haven't gone after those people to have them come back because we are waiting to resuscitate our business some ways, later on. We'd be glad to have them come back. We are keeping the names of the former guests

—navy men and otherwise, and I hope we have time enough to go to see them, sometime. I travel a great deal during the year.

Q. At the present time, is there enough demand for transient rooms to fill the house?

A. Not now, Sir.

Q. So there never have been enough to replace the busi-
[fol. 29] ness that was lost?

A. No, sir.

Q. With reference to the men in the navy who would come in here and register at your hotel, you say, during part of the picketing, either in the connection with the de-activation of ships, while awaiting discharge, or any other business that might bring them in,—can you give the court some idea of approximately how many people would stay at your hotel, having registered there?

A. They would stay, some of them, if the ship remained in the harbor or yards, for a period of three months, sometimes.

Q. Some of them, of course, wouldn't stay that long.

A. Yes, it varied. Others, being de-activated, stayed a short time. Those who came in for discharge stayed a short time.

Q. It would depend upon the stay of the ship?

A. Yes.

Q. Could you give the court an idea of the maximum and minimum of the stays at the hotel of such navy people?

A. No, sir, because the transient business is hard to estimate. I would say that frequently, transient business would be for a few days, only, and I wouldn't want to make a guess at it, but the books would show that. I think you can determine that better by Mr. Stickney or someone else who has gone through those books and segregated them.

Q. Can I put it this way: Do you know of anyone of your own personal knowledge, who came here in connection with ships at the yard and stayed at the hotel and stayed there for more than a few days?

A. I can recall quite a few members of the navy that have come and stayed longer than that.

[fol. 30] Cross examination.

By Mr. Gill:

Q. Mr. Gazzam, you are quite familiar with the general nature of the hotel business in Bremerton?

A. I think so, Sir.

Q. And you have been quite familiar with it since 1925 when you first went into it?

A. I wasn't as familiar with it in 1925 as I am now, Sir.

Q. You know about business having its ups and downs?

A. Yes.

Q. And you know about the effect that the employment of the navy yard has had upon your hotel business and the hotel business of other firms in Bremerton?

A. Yes, I think I am familiar with that—not so much in the transient hotel business.

Q. You know generally speaking, if the number of employees in the navy yard increases, there is a general increase in the hotel business in Bremerton, generally speaking?

A. I would say, "Yes," because of the ships coming and going.

Q. If the employment of the navy yard drops, then the general tendency of the hotel business is to drop?

A. Absolutely, we do not contend otherwise.

Q. There is now about 10,000 people employed in the navy yard?

A. I don't know how many are employed in the navy yard, now.

Q. At one time, there was more than 32,000 employees in the navy yard?

A. I think it went up as high as 34,000.

Q. I know now, you are very familiar with the situation. It has dropped very considerably, has it, in a very few months? It is now down to 10,000?

[fol. 31] A. I think—I am not sure but what it is *is* a little below 10,000. Of course I haven't checked it. What I mean is, I'm not familiar with the figures. They publish it every week.

Q. Has that drop in the number of navy yard employees affected the business of your hotel and the business of other hotels in Bremerton?

A. A little.

Q. Very considerably?

A. Yes.

Q. I don't want you to guess if you feel you have to guess to answer. I don't want you to guess. I'm going to ask you this question, Mr. Gazzam: Whether you know any way of telling how much your business has dropped by reason of this cut in the payroll of the navy yard?

A. No, sir, I couldn't tell you that except that general business has seen a gradual decline, including hotels.

Q. You haven't concerned yourself with the employment of the navy yard? You haven't had experience with it before?

A. That is very true, Sir.

Q. You are quite satisfied in your own mind, however, that it would have dropped even though the pickets hadn't appeared?

A. It wouldn't have dropped during the period the ships were de-activated and navy men separated. Seattle has taken our separation unit. They have taken our receiving station and about everything that used to bring us a lot of transient business. That is very recently. They have taken everything that has helped business in Bremerton and it's gone backwards and gone down.

Q. It would be very difficult to take your loss of business and segregate it, as to how much of the loss of business was due to picketing and how much was just due to this general situation?

[fol. 32] A. There was no perceptible drop of business until the pickets went in, for a period of forty, fifty, or sixty days previous to that. There was a perceptible drop in business because of the picketing, which we can definitely set up, I think, by the accountants on the stand. I haven't gone into that. It is quite definite.

Q. Didn't this drop occur during the period that the navy yard employment was going down, during the same period?

A. All this time they still had the separation department and still had the receiving station—all the time the pickets were there. They were not taken away from us until quite recently.

Q. I understand. But there was a general curtailment of business, though, during the period of picketing?

A. I think it might have decreased prior to that but the decrease would be the heaviest the last few weeks of the picketing.

Q. I am interested in the decrease that took place simultaneous with the picketing and the cutting of the navy yard payroll, in June.

A. I'd be glad to answer that except the books will show that.

Q. Did you get milk deliveries during the picketing?

A. Well, Sir, we have a very small dining room—only feed four or five or six of us.

Q. Just for your help?

A. We just got our own deliveries. We had no trouble about the deliveries we went for or sent for.

Q. You got your milk?

A. Yes.

Q. You got deliveries of groceries during the period of picketing?

A. Either that or Mrs. Kennedy goes for them and gets them, herself.

[fol. 33] Q. The postman delivered mail?

A. No, sir, we have to go to the post office for mail. The post office was too busy to deliver our mail.

Q. You saw the pickets there every day, didn't you, Mr. Gazzam?

A. When I was in the hotel or in Bremerton, I did. Several days, there were no pickets. That was several days when the union held meetings with Mr. Turner. I knew they were intermittent but I couldn't tell you the number of days.

Q. Was there any change in business in June when there were no pickets?

A. Oh, I couldn't say.

Q. Any change since July 20th, the last day of the picketing?

A. Naturally, I wouldn't know. It might have fallen off, Sir. That, I am not familiar with. We can tell that exactly by the accountant's books.

Q. You say the picketing has been responsible for many of your troubles in connection with your business and deliveries?

A. Yes.

Q. Now, I am asking you, is that condition changed due to the fact that the picketing stopped?

A. We can get deliveries much better but we have lost business and we can't get it back.

Q. Your loss of business is not due to picketing, though?

A. It is a result of the picketing and we are still on the unfair list. And former tenants stay away and are not coming back.

Q. But how does it now affect your business?

A. We have a transient hotel for people coming and going.

Q. How would your transients know that your firm is on the unfair list unless there was picketing going on?

A. I think they are members of unions—members of other unions—and they would be told so.

[fol. 34] Q. Then, to the extent of your transient union people, you have had a loss of business due to being on the unfair list?

A. Yes.

Q. But transients that didn't belong to a union didn't have that effect?

A. That is true.

Q. You indicated that a lot of your guests came from navy personnel in here from ships that came in to be repaired. You understand that they are not bound to take notice that your firm was on the unfair list—the fact that they didn't come to you was not due to the fact you were on the unfair list, was it?

A. No, but we were unable to take them at that particular time because of the lack of laundry at that time and they didn't come back.

The Court: You don't contend that they were concerned with the picketing or unfairness, it was simply because you couldn't get laundry?

The Witness: Couldn't get laundry.

The Court: As long as we are on that subject, what is the total length of time you couldn't get laundry done adequately to supply the whole hotel?

The Witness: I am approximating—several weeks.

The Court: By "several weeks," do you mean two or three?

The Witness: Oh, more than that.

The Court: Four?

The Witness: We were a long time so we couldn't get our laundry. I would say, four, five, or six weeks. I am telling you that purely and wholly as an estimate, you understand.

Q. You have seen tenants come into your place of business [fol. 35] when the pickets were in front?

A. Yes.

Q. You didn't see the pickets do anything to stop the tenants from coming in, did you?

A. I did, Sir.

Q. You saw them do something with regard to deliveries —did you see the pickets do anything?

A. I saw them take numbers of cars that stopped.

Q. With regard to that period, did your employees still work for you during the period of picketing?

A. Yes.

Q. Without any exception?

A. I don't remember but one bell boy that left us during the period and he was drunk on the streets and the police picked him up with our uniform on and we let him go.

Q. You stated the number of employees you had during May and the period of picketing. You have approximately the same number of employees, now?

A. Yes.

Q. Are those employees the same persons you had during May or June—the ones you have now?

A. No, sir. They more or less change. Husbands of maids are always going away or getting let out of employment and leaving. There are more changes in our maids department than any other.

Q. You explained in your complaint that your employees were very happy about their condition of employment.

A. I think they are, Sir. I know of nothing to the contrary.

Q. Do you know, Mr. Gazzam, as a matter of fact, that some of your employees have quit due to complaints over employment conditions?

[fol. 36] A. No, I do not. They didn't tell me about anything like that.

Q. Do you recall circumstances under which you or someone under your management requested some of the employees to take care of the linen after working hours, and some of them quitting because of that?

A. I don't recall.

Q. Is it possible your manager could have done that without your knowledge?

A. No, sir, I think I'd have the knowledge.

Q. Have any of these employees quit your employment over some complaint about their working conditions, their wages, or their hours or something to do with some of their working conditions?

A. There's never been any complaint to me, directly, except some of them don't work over five or six hours.

Q. Complaints come to you from the manager to the effect that some of the employees are dissatisfied with working conditions?

A. We have no manager.

Q. This grey-haired lady that you refer to as your manager.

A. No, sir, not from Mrs. Stapleton.

The Court: What is her position?

The Witness: Her position was in the front office until 4:00 and then she was in charge of the maids.

Q. Housekeeper?

A. In charge of the maids.

Q. Housekeeper?

A. Joint housekeeper and front office clerk.

Q. Now, she had the right to come to you from time to time and tell you how the maids were doing the work?

A. Yes.

Q. And you accepted her recommendations, didn't you? [fol. 37] A. Yes, largely.

Q. She told you that a maid was doing very good work and you accepted that without investigating the work, personally?

A. Yes.

Q. If the housekeeper made a complaint about the work of any maid, you accepted that without investigating the complaint, personally, at all?

A. At my age, I'd be up all night and day, if I did.

Q. This vote that was taken, wasn't that taken under the instruction of this lady—housekeeper?

A. She was one of the employees.

Q. She told them to come up and vote on the subject,——

Mr. Turner: Just a minute. It already appears that Mr. Gazzam was not present.

The Court: He may answer, if he knows, of course.

Mr. Gill: If he knows.

A. No, sir, I do not know that she was in charge of that meeting in any way.

Q. Did you ever make any statement to your housekeeper or any of your employees of your hotel that under union conditions that you would only have three or four maids to do the work? Did you ever make that statement?

A. No, sir.

Q. Ever hear your housekeeper make that statement in your presence or in the presence of the employees?

A. No, sir. The number of maids employed depends upon the number of rooms to be made up. We have six maids now instead of seven. Now we have only six.

Q. You know of some other hotels in Bremerton—comparable hotels—where fewer number of maids are required to do the work?

A. Yes.

[fol. 38] Q. Under union conditions?

A. Not under union conditions. I don't know of any hotels that are unionized in Bremerton. There is not one that I know of.

Q. Now, this first meeting had with Mr. Morgensen and Mr. Meyer, the defendants in this case, there was some mention to you about the union having a wage scale of 85 cents for maids, an hour?

A. Well, Sir, I don't recall. That was a very pleasant interview. I gave them the run of the house and said I was going away. I wanted to go away, anyhow, and some of that conversation may have taken place but I also told them that our maids don't do over six hours' work a day. And the statement was one of comparison, and they said that we were only paying a certain amount an hour, but they figured it on the basis of a forty-eight-hour week instead of thirty-six.

Q. These gentlemen mentioned sick leave, vacation and working conditions?

A. They didn't submit any contract.

Q. Didn't they tell you that under union conditions, you would have to increase your wages?

A. They might have said that I ought to.

Q. Didn't you tell them that you had a person working for $26 a week—about $26 a week for a forty-eight-hour week?

A. They worked about thirty-six hours a week—the maids did.

Q. At this meeting, did you tell them you had a person working for you—not necessarily a maid; but some person working for you at the hotel for about $26 a week on a forty-eight-hour week?

A. No, the maids are paid $26.16 for a thirty-six hour week.

Q. Isn't that for a forty-eight-hour week?

A. No, they are on a forty-eight-hour basis but they [fol. 39] never have worked more than thirty-six to forty hours a week.

The Court: What do you mean?

The Witness: They come late and go early when they get through.

The Court: The time they are supposed to be there is forty-eight hours—for what?

The Witness: $26.16. That is the War Labor Board scale, made for us under strong pressure. In other words, we had to appear before the War Labor Board and the scale was raised in line with comparable hotels, even though we were especially needed. Is that sufficient answer to that?

Q. You recall telling the gentlemen that you couldn't afford to operate the hotel and pay union wages?

A. No, Sir, I don't recall telling them that.

Q. You recall telling of other hotels operating under union conditions—that they lost without profit?

A. No, sir, not during the war. I don't know of any operating at a loss during the war.

Q. I am recalling what you said to these gentlemen at the meeting. You recall telling Mr. Morganson, the gentleman seated by me, that if he could run your hotel at a profit, you would gladly give him $50 more than they were paying him as a business agent of the union?

A. No.

Q. You don't recall any discussion of wages?

A. Yes, I recall quite a bit about that.

Q. You recall that. Tell us what you said about that in the discussion of wages.

A. We were discussing union wages and I told them that we had a great deal of difficulty to get our wage

stabilization—to get the War Labor Board to set it as [fol. 40] high as it was. We were asking for it. We were then paying less.

The Court: Any discussion between that wage and the union wage scale?

The Witness: Not that I recall. We were very pleasant and having a very friendly conversation—talk—and I told them that I volunteered to go away and give them the run of the house.

Q. You recall Mr. Morgensen telling you that in the housing projects in Bremerton, the maids were paid 85 cents an hour?

A. They might have told me that and I would have told them that it was quite a difficulty competing against the government housing authorities and yards.

Q. Does that refresh your memory that they told you at that meeting that the maids in the housing authority were paid eighty-five cents an hour?

A. I told them that. I don't recall whether they told me. They did mention a dollar an hour.

Q. That dollar an hour was for work in theaters?

A. I don't think theaters were mentioned.

Q. They mentioned a dollar an hour?

A. And I told them that was out of the question in a hotel of our type. I am thinking, now, of the maid question, Sir.

Q. Did they ask you about giving vacations and sick leave to your employees?

A. No, no contract was made before me.

Q. I didn't ask you about a contract. I am asking you if Mr. Morgensen and Mr. Meyer asked you about giving vacations and sick leave to your employees?

A. No, sir, I don't recall a thing said about vacation.

Q. Sick leave?

A. No.

[fol. 41] Q. With regard to holidays with pay? Did they ask you to give holidays with pay to maids?

A. No, sir, they didn't mention that. We just had a very pleasant chat.

Q. I understand how very happy it was. Some of your other employees belonged to other unions, Mr. Gazzam?

A. I don't know that they were.

Q. I am just asking you.

A. I don't know that.

Q. You don't know that. When you stated that you employ union people, occasionally, would that be building tradesmen?

A. Yes, most 'specially, plumbers, electricians, carpenters—I never made any distinction.

Q. Did you know that the union had propositioned to Mr. Turner, your attorney, a condition of employment whereby your present employees would not have to join the union but that new employees would have to make application to join the union after fifteen days or some sort of a short period?

Mr. Turner: Just a moment, fix the time.

Q. During June, 1946.

A. I don't recall anything except the letter that Mr. Turner wrote to Mr. Merkel on that point—on the point similar to what you have just asked me.

Q. It was your understanding that the union was insisting upon all your present employees joining the union and if they failed, you would be required to discharge them. Were you advised during June, 1946, that the union had waived that request—waived it—withdrew it?

A. I understand—"waived it." I don't remember the time. I don't remember that it came to me. Mr. Turner [fol. 42] was in complete charge of that angle with Mr. Merkel.

Q. Your complaint—your serious objection—is to a request or demand of the union that your present employees join the union? That is stated in your complaint. You have any objection to a plan whereby your present employees would not have to join the union but any new employees would have to make application to join as union members in say, fifteen days?

Mr. Turner: For the purpose of the record, I want to enter an objection, here.

The Court: Objection sustained.

Mr. Gill: Very well.

The Court: Mr. Gazzam, just a couple of questions: Can you give me an idea how many rooms were blocked off at any one time by reason of not having laundry?

The Witness: May we have Mrs. Stapleton go over it with us?

The Court: Can you give us any idea of the number of people who did not patronize your hotel, such as members of the various unions, because of the picketing and listing as unfair?

The Witness: It was a limited number.

The Court: About a half dozen?

The Witness: Yes.

The Court: That, plus the inability to get your laundry work done,——

The Witness: Is the measure of damages.

The Court: (Continuing)——is the only loss that occurred to the hotel?

The Witness: Absolutely.

[fol. 43] Mr. Turner: May I inject a little statement, there. As I understand Mr. Gazzam's testimony and that of Mrs. Stapleton to follow, during the early portion of the picketing when the ships were coming in and being de-activated and the receiving station was there and the tourist trade was on, there was enough business to take care of the hotel without the union people—enough to take care of the patronage, so that the actual damage from that item merely starts—not with the picketing—but when the general number of guests fell off, so that there was no one to take care of the trade at the end of the picketing.

The Court: Would you repeat that, please?

Mr. Turner: Let's say, May 29th—that was when the Enetai Inn was placed on the unfair list. Right there, let's say there were a half a dozen who had been coming for years to the hotel, that were labor people. They quit coming,——

The Court: They still don't come?

Mr. Turner: Yes, but there wouldn't be any damage from the loss of business right at that time.

The Court: At that particular time, you mean?

Mr. Turner: Yes, because there was just such a crowd of people from the navy and tourists.

The Court: I see what you mean. That is all.

Q. May I ask one question, Mr. Gazzam? Mr. Gazzam, did you have a painter do some decorating work at the hotel, this summer?

A. This summer?

Q. Yes.

A. No, sir, we had no painter this summer.

Q. When?

A. Our upkeep man does the painting.

Q. Your what man?

[fol. 44] A. "Upkeep" man.

Q. He is a regular employee?

A. Regular employee.

Q. Did you have any outside painted *to* any decorating the last year or so?

A. Yes.

Q. About what time was that?

A. We had a man employed for two years, paid him union wages, $1.53 an hour.

Q. That is an outside man?

A. We employed him and kept him there.

Q. How recently was it that you employed him?

A. He has been gone over a year, Sir. Now, we are doing some upkeep work, from time to time. If something is wrong with the plumbing, we call in a plumber—if the roof needs fixing, we call in a roofer.

Q. I am interested in the painting work.

A. The painting work now is being done by our upkeep man, who is an engineer.

Q. This outside man wasn't a union painter, was he.

A. You mean the one we had a year ago, previously?

Q. Yes.

A. He was a union man—a member of the union.

Q. The upkeep man is not a member of the Painter's Union and he's not a member of the Building Service Union?

A. No, he's just one of the employees that has been with us this year. That is the custom in all hotels. That is the custom in all hotels—that the engineer has charge of the upkeep item.

Q. Showing you Defendant's Exhibit No. 1,——

Mr. Turner: I wonder if it would save a little confusion if I offer the statement: I don't believe that [fol. 45] Mr. Gazzam has ever seen that paper. I have

seen it and I am willing to concede its authenticity but object to it on the ground of its lack of materiality and relevancy. I think it is in the status of an offer and compromise that was never accepted. That might be one ground of objection. And also, it was first brought into the matter about a month after the picketing had started. It was an offer on the part of the union to partially recede to some extent from its position.

Mr. Gill: You are objecting to the offer, Mr. Turner?

The Court: He is registering an objection as to its materiality.

Q. Can you read the document, Mr. Gazzam?

A. I hope so.

Q. I will read it to you if you can't read it.

A. This was evidently June 22nd, after the picketing started—might have been after it stopped.

The Court: Do you know anything about that paper, Mr. Gazzam?

The Witness: No, Sir, never saw it before.

Q. Briefly, this is a statement that your present employees would not have to join the union but new employees would have to join?

A. That never came up.

Q. That never came up to your attention?

A. No.

Mr. Gill: That is all.

[fol. 46] Lois B. Stapleton, called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Turner:

Q. Your name is Lois B. Stapleton?

A. Yes.

The Court: You live in Bremerton?

The Witness: Yes, at present.

Q. Are you employed at the present time?

A. No, I am not.

Q. You were formerly employed by Mr. Gazzam at the Enetai Inn?

A. Yes.

Q. What was your position there?

A. Well, I was housekeeper and desk clerk.

Q. How long were you in that capacity?

A. I went there as executive housekeeper, May the 15th, I think, and then later——

The Court: Excuse me, May 15th, what year?

The Witness: 1946. And later in July—July 1st, I believe it was, the day clerk left and I took over the desk from 8:00 until 4:00 in the afternoon.

The Court: When did you leave?

The Witness: August 15th.

Q. What were your duties as housekeeper?

A. To hire and fire the maids. I was superintendent of the maids and the housekeeping department, had to buy the supplies and attend to the decorating and housework in general.

Q. Did you have anything to do with knowing about the supply of guest linen and knowing whether it were ade-
[fol. 47] quate for a day's operation? That would fall within your duties?

A. Yes.

Q. As desk clerk, what were *you* duties?

A. To sell *roms*, answer the switchboard, and just be a general hotel clerk.

Q. Sell rooms, you say. That would include the registering of the guest?

A. Yes, and assigning the room.

Q. Do you recall ever seeing Plaintiff's Exhibit "B"?

A. Yes, I saw that.

Q. Do you recall when you saw that?

A. The morning it arrived in the mail. Mr. Gazzam brought it out of his office and showed it to me.

Q. Do you remember when the pickets first appeared?

A. Yes, they appeared that day.

Q. The day the letter came?

A. I believe Mr. Gazzam testified that it was two or three days afterwards but I think if he will think a little harder, he will remember it was the same day. I remember when Mr. Gazzam showed me the letter and I said, "I won't believe it until I see them." And he went up to his suite

and a few minutes later I called him and told him they were there.

Q. Called him on the phone?

A. Yes.

Q. You saw the pickets before he did?

A. Yes.

Q. Do you recall how long they were there before the first interruption of the picketing?

A. No, I couldn't say.

Q. Now, it was a pretty good time, according to that list of dates—do you have that, Mr. Gill? (Counsel handing list to Mr. Turner) May we interrupt the testimony to get the [fol. 48] picketing dates in the record? I'll take it up with counsel and get the dates in the record. What is it, now?

Mr. Gill: This list, that is marked for identification as Plaintiff's Exhibit "C", is a list of persons who picketed and the dates of the picketing, as taken from the union records. We submit this to Mr. Turner at his request.

The Court: You want to offer it?

Mr. Gill: No objections.

Mr. Turner: Yes.

The Court: It may be admitted—Plaintiff's Exhibit "C".

(Whereupon, list of pickets and picketing dates, was received in evidence and filed as Plaintiff's Exhibit "C")

Q. When the pickets first came, Mrs. Stapleton, that is about—according to your own testimony—about May 29th, did you have enough guest linen to carry on without further laundry or linen supplies?

A. To carry along for how long? For a couple or three days, we could have got along in an emergency without laundry.

Q. What effect did the picketing have on your laundry supply? You heard Mr. Gazzam testify they refused to deliver?

A. That is right.

Q. And did you have anything to do in connection with seeing that the soiled linen was taken to the laundry for processing—to the commercial laundry?

A. Yes.

Q. What was the name of that laundry?

A. City Hand Laundry.

Q. City Hand Laundry. And that was taken up to the City Hand Laundry in Mr. Gazzam's car?

A. Yes.

Q. When the pickets went off, did the laundry driver come [fol. 49] into the hotel to deliver laundry and pick up soiled laundry, when the pickets went off at first?

A. The first day or two, he did.

Q. When the pickets went back on, there was no further delivery?

A. No.

Q. Now, how long was it that you were able to arrange for the doing of that soiled guest linen by sending it to the City Hand Laundry in Mr. Gazzam's car?

A. Well, it couldn't have been over eight days, at the most. I think it was about a week.

Q. Then, what happened?

A. Well, Mr. Gazzam, as he told you, bought this little laundry over at Manette and we sent our maids over there during working hours—between the hours of 8:00 and 4:00, and not after hours, as these gentlemen have indicated. They did it on our time at a 15 cents an hour increase, when they were doing laundry work over at Manette. They were carried back and forth by Mr. Gazzam's car, either by the porter or engineer, and they all told me they didn't mind it at all. And we had the washing machines and it was not hard work and they were never over there more than two and a half hours at a time and they came back and had their lunch and went on with their maid work.

Q. Were you able, by this means, to process an adequate supply of guest linen?

A. No, we couldn't get it dry. We had no facilities for drying laundry and it happened to be a rainy, damp period and we hung the clothes all over the basement, in the cottages, and the sample room and wouldn't dry very fast. Some of them hung there for three or four days.

Q. Did you, personally, ever have occasion to refuse [fol. 50] guests accommodation in the hotel because of the laundry situation?

A. Yes, I have.

Q. Will you give the court some idea of the number of such persons and the number of vacant rooms at the time?

A. Well, I couldn't quite——

The Court: Does the bookkeeper have a list of rooms that were closed because of lack of laundry and how long they were closed and do you know whether he has that?

The Witness: We have the daily room reports. We don't have a record of which ones were closed on account of lack of laundry. In other words, we just have the number of rooms occupied, but why they were not occupied is not shown on the books.

The Court: All right, tell us how many rooms were blocked off and for what length of time, because of the lack of laundry, and so forth?

The Witness: Well, I remember one time we blocked off forty-seven rooms.

The Court: That was one night?

The Witness: Other nights, maybe there would be thirty rooms blocked off. Another, maybe fifteen to twenty.

The Court: That was because you had no laundry?

The Witness: Because we had no laundry, yes.

Q. If you had had an adequate amount of laundry, Mrs. Stapleton, during the month of June, would there have enough guests to fill the house?

A. We could have kept every room full in that month because the big battleship, "Iowa" or "Ohio"—some of the big battleships—there was two of them came in. I remember one time there was a young naval officer, advance housing man, came in to see me. He told me he must find housing accommodation and hotel accommodation for 1700 people. And I was obliged to turn him away. I told him we would do our very best to accommo- [fol. 51] date some of them but we couldn't give assurance as to how many we could accommodate. We just didn't know. We didn't have laundry.

Q. With reference to during the picketing, before, or after, when was that?

A. It was during the picketing.

Q. About how long did this demand continue after the month of June, so you could have filled the house, if you had had the laundry?

A. Well, it wasn't very long after that, some of the boats left. And, of course, in the meantime, the people who were still here, were, as Mr. Gazzam says—they had

found other accommodation and had been located and settled at that time.

Q. Did any of those people come back to your office—people who you turned out—turned away because you didn't have guest linen? Did any of them subsequently come back?

A. I don't think they did. Subsequently, possibly some of *the* did. I didn't know them personally, of course.

Q. Your shift was from 8:00 in the morning until 4:00 in the afternoon?

A. Yes.

Q. State whether or not that was the largest shift, so far as registration was concerned?

A. Yes, it is.

Q. About how long did the lack of laundry supply cause you to turn away prospective guests?

A. Well, we were still turning them away when I left; the 15th of August.

The Court: On account of lack of laundry?

The Witness: Yes.

The Court: Wasn't the commercial laundries doing it then?

[fol. 52] The Witness: No, sir. We were still doing our laundry over at Manette.

The Court: How long did you send your maids to Manette to do the laundry?

The Witness: Well, that went on for a little over a week.

The Court: Well, then what?

The Witness: Then the Montgomery brothers did it. They were doing it rough dry.

The Court: Weren't they doing it sufficiently?

The Witness: They had no mangle.

The Court: Couldn't you get enough, that way?

The Witness: We were getting our laundry haphazardly but it wasn't properly mangled and the sheets were still rough-dry, and the pillow slips, dresser scarves and so on and so forth.

The Court: We will now adjourn until 1:30.

(Court adjourned at 12:00 for noon recess; subsequently, at 1:30 P.M., all parties present as heretofore, the proceed-

ings continued as follows, with Mrs. Stapleton again on the stand:)

Q. Mrs. Stapleton, you referred in your testimony, this morning, to the advance agent of some large *shipment* of the navy. Will you tell whether that was the only request made by an advance agent, who came to arrange housing for men who were *expectant* to arrive in Bremerton?

A. That was the only time in my shift that an advance agent came in for a ship. They might have come when other clerks were on duty.

Q. Do you recall whether this particular ship stayed in the harbor any longer period of time than any other ships [fol. 53] that arrived here?

A. Yes, I think it did. It was here for a complete overhauling—so he told me—and was to be here, I think he said, a matter of three months. I am not positive about that, but something of the sort.

Q. And did that ship actually arrive while you were there?

A. Yes.

Q. And was that during the period of picketing?

A. Yes.

Q. Prior to the period of picketing and while you were employed there at the hotel, was there anything of an unusual nature that arose, which would affect the volume of business of the hotel?

A. Yes, decidedly.

Q. What was that, prior to the picketing?

A. Prior to the picketing—oh, I beg your pardon. I misunderstood your question.

The Court: Was there anything unusual affecting the business prior to the picketing?

The Witness: No, nothing. No, I am sure there wasn't.

Q. During the period of picketing, was there anything besides the picketing which was out of the usual routine?

A. No, Sir.

Q. Was there any other *occurence* which would affect the volume of business done by the hotel, except the picketing?

A. Would the laundry situation come under that heading?

Q. That relates to picketing. The laundry was stopped by the picketing. Outside of that?

A. No, I think not.

Q. Do you recall, about May 10th of 1946, when there was [fol. 54] a meeting between representatives of the union and the employees of the hotel?

A. Yes, I do.

Q. Will you tell just what occurred at that time?

A. Well, I believe these two men here and I think,——

Q. Pardon me, Mrs. Stapleton, that wouldn't show in the record. You are pointing.

A. Mr. Morganson and Mr. Meyer.

Q. This is Mr. Meyer—right there (indicating) and that is Mr. Morganson (pointing) with those two gentlemen. And this gentleman here (pointing) is Mr. Holbrook?

A. Yes. And there was another man or two more. There was several of them, I know. They were all strangers to me at the time, but they met there and Mr. Gazzam came to me and told me that the union representatives were coming and wanted to talk to all of the maids and all of the employees and would I please ask them to come into the sample room.

Q. Where is the sample room?

A. The sample room is below the lobby on the first floor. And I sent the janitor down to arrange chairs and fix sort of a speakers' table and informed all of my maids as they came back from lunch, and all of the employees, that they were to meet down there with the union officials—that they wanted to talk to us. There was no instructions given to them other than they were to be there and hear what had to be said. And one of the maids was a little late getting back from lunch and I apologized to the union man for our slight delay, and when she came in, the meeting got started and each one of them got up and made a little talk. First, I think, you made a little talk.

Q. You mean the representatives of the union, don't you? [fol. 55] A. First you made a little talk and introduced the men, I believe, or I remember you spoke a few words. And Mr. Morganson, Mr. Meyer, and two or three of the other men gave talks in favor of the union—why they should join and the advantages to be gained and so on and so forth. After they had all spoken, we put it to a vote.

Q. Before we get to the vote, was Mr. Gazzam present at that time?

A. No, sir, he was not.

Q. Did anyone on behalf of Mr. Gazzam make any remarks against the union at that meeting?

A. Decidedly not.

Q. Were there any remarks addressed to the union representatives?

A. One of them asked, I believe, after he completed his talk, if there was any questions. No one asked anything. Then they all went upstairs and I was sort of elected for chairman or speaker,—speaker in charge. And I asked anyone who wanted to join the union to raise his hand. One raised his hand,—a bell boy and janitor. One of the maids didn't know whether she did or not. She wanted to talk it over with her husband. I went upstairs,——

I asked for anyone who did not want to join to hold up his hand. They all held up their hands that they didn't —except these two. And I think there was eleven of us present. One said he wanted to join. One was undecided. And the rest said, "No." I went upstairs and reported the way it happened to you and the other gentlemen and resumed my duties as usual. And that was all there was to that meeting, that I remember. Oh, I might add that about twenty minutes later, I went up on the third floor and found one of the colored men, whom one of the union men had [fol. 56] referred to in one of his talks. After Mr. Gazzam had granted him the privilege of gathering in the sample room and talking to them; they took forty-five minutes' time. And then twenty minutes later, I found this colored man attempting to talk to them in the linen room. They had already had a meeting and I seen Mr. Meyer, the young man here in the sweater, there at different times, talking to the maids and different ones of the employees on Mr. Gazzam's time. And I thought he had been generous enough. I asked them to please leave and let the maids go on with their work.

Q. Did Mr. Gazzam, ever at any time, speak to you against your joining the union?

A. No.

Q. Did he ever speak to you at any time as being opposed to any of his employees joining the union?

A. No, sir.

Q. Did you at any time address any of the employees, advising them not to join the union?

A. No, sir, I did not.

Q. Mrs. Stapleton, do you know whether or not any of the guests or prospective guests of the Enetai Inn refused to come there because the Inn was listed as unfair?

A. Yes.

Q. What was the basis of that knowledge? How did you find out?

A. Well, one of our guests, a Mrs. Emory, said she had lived there for some time and was very well satisfied with the room and location but she would have to leave until after the pickets left. And she did move to another place.

Q. Did you personally know any of the people referred to in Mr. Gazzam's testimony, who had been in the habit of coming to the hotel, that stopped there after the picketing?

A. Yes, I knew them by sight. I'm afraid I couldn't re-
[fol. 57] call any of their names, now.

Q. Did you know the fact that there were certain of those people that stopped coming?

A. Yes.

Q. Have they come back again from the time they left?

A. No, not all of them had.

Q. Some of them had and some of them had not, is that right?

A. One of them had come back after the pickets left.

Q. Do you have any means of knowing how many people, who would normally stop at the hotel, do not do so, now, because of the listing of the hotel as unfair?

A. No, I am afraid I wouldn't want to say. I don't know.

Mr. Turner: For the information of the court, I have just conferred with counsel about a series of records known as the "Daily Rooms Report" or the daily report. These daily reports contain figures which will be used as a part of the foundation for the computation of damages. However, the original daily reports, themselves, as I understand it, are required by law to be kept at the hotel, and these original documents could not be physically introduced in evidence. I have suggested to counsel that the witness identify them, insofar as she is able, and they will be here for use during the trial and if counsel or the court desires that copies be substituted, we'll have them prepared and put in the record as soon as they can be prepared.

The Court: Is that all right?

Mr. Gill: Yes, Your Honor.

The Court: Do you want to put those in evidence so that we may use them during the trial and then you can substitute copies later?

[fol. 58] Mr. Turner: Yes, Your Honor.

Q. Mrs. Stapleton, I am handing to you a bundle of papers on a printed form entitled, "Daily Rooms Report," each bearing a different date. The first one in this bundle I hand you bears the date, May 1st, 1946, and the last one bears the date, August 31st, 1946. I guess both dates are a little beyond your period of employment but it appears there are reports in here for each day during that period. Would you please glance at those and tell the court what they are?

A. These are sort of a recap of the entire day's business—the amount of business—the number of rooms occupied.

The Court: And the rents received?

The Witness: And rent received for each room and average.

Q. Did you have occasion in the course of your duties to consult that daily report?

A. Yes. I was on the desk.

Q. And there is a separate page for each day, here?

A. Yes.

Q. What is the purpose of that record?

A. Well, this is sort of a record. It is just the whole day's business, boiled down to exact figures. Shows which rooms are occupied and the number of occupants in each room and the number of rooms vacant, so the manager can tell the number of rooms occupied the previous night, the room rate, and the number of vacancies, at a glance.

Q. With reference to the amount endorsed opposite the rooms, does that represent actual cash taken in or the amount earned for that partjcular occupancy?

A. Well, it wouldn't always be the actual cash taken in. A great many people pay their room rents by the week or [fol. 59] they stay two or three days and pay their bill when checking out—if I understand what you mean.

Q. Yes, that is exactly what I wanted to bring out. So that the amounts there are accruals rather than cash actually taken in. The cash might vary according to whether the guest pays for one day or several?

A. That is true.

Q. But the figures there, represent the amount earned for that particular day?

A. Yes.

Q. Who kept this record? I mean, who made up these sheets?

A. The night clerk makes up these sheets after midnight.

Q. And he sleeps during the daytime?

A. Yes.

Mr. Turner: Now, I want to say, for the information of the court and counsel, that that man is asleep, now, that makes up these sheets, and if he is needed to identify them, we can wake him up and get him over here.

The Witness: I make some of these up, myself. There were times that I relieved the night clerk when they didn't have the relief clerk available.

Mr. Turner: I think that is all, then.

The Court: You want to make the record up, don't you? Better mark them with the understanding that they may be taken away at the end of the trial. And if an appeal is necessary, then you may substitute copies. But you had better mark them, otherwise the record won't show anything.

(Exhibit marked)

The Court: Plaintiff's Exhibit "D" marked and admitted with the understanding that copies may be substituted in [fol. 60] the event of appeal.

Mr. Turner: Yes.

(Whereupon, Daily Rooms Reports, were attached together and admitted and filed as one exhibit, Plaintiff's Exhibit "D.")

Cross examination.

By Mr. Gill:

Q. You belong to any union?

A. I belong to a hotel union in San Francisco. That is, I draw a card from there.

Q. Are you familiar with the Puget Sound Laundry and Dry Cleaners?

A. Am I familiar with them?

Q. In Bremerton.

A. Only with their driver, just.

The Court: Do you know them as being in the laundry business?

The Witness: Yes.

Q. Did you make an attempt to get them to do your laundry work?

A. I talked to the driver.

Q. Did you talk to the management of the firm to see whether they would do the laundry for the Enetai Inn?

A. Yes.

Q. And when was that conversation?

A. When was it? I don't remember the exact date. It was Mr. Gazzam and the manager of the laundry done most of the talking about that.

Q. Well, what took place in your presence with respect to [fol. 61] requesting the Puget Sound Laundry to do the hotel's laundry?

A. They refused.

Q. They refused to do it?

A. Yes.

Q. And that was during the period of the picketing?

A. Yes.

Q. Are you familiar with the Shannon Service Store, which operates a laundry and dry cleaning service at four different locations in Bremerton and Port Orchard?

A. Shannon's Service Store?

Q. Are you familiar with their laundry service?

A. No, sir.

Q. Did you make any effort to see whether they would do the hotel's linen—laundry.

The Court: Is that the City Hand Laundry?

Mr. Gill: Shannon's Service Store.

The Court: Didn't that used to be the City Hand Laundry?

Mr. Gill: City Hand Laundry?

The Witness: Isn't Mr. Shannon the owner and manager of the City Hand Laundry?

The Court: That is right. Did you have any conversation with them?

The Witness: No, I didn't, except with the driver.

Q. Showing you what is marked, "Defendant's Exhibit No. 2," will you tell what that is?

A. Defendant's Exhibit No. 2,——

Mr. Gill: Well, I might say, "Defendant's Exhibit No. 2," is a page from the classified section of the Bremerton Telephone Directory that I removed myself. It lists numerous laundries and dry cleaning services in the city of Bremerton and that area.

[fol. 62] Q. You know about the City Hand Laundry—this Help Yourself Laundry, is that the one you refer to in Manette?

A. I don't know whether it was or not. I don't think so.

Q. It says here—an item: "Do Your Washing Here." There is several of them over there?

A. At least more than one. I don't know how many.

Q. You don't know whether it's this one or not?

A. No.

Q. And then on the other page, there is the Puget Sound Laundry and Dry Cleaners and you say they refused to do the laundry service?

A. The Puget Sound—yes, they did.

Q. And that refusal was in your presence?

A. Yes.

Q. You say you overheard a conversation the Puget Sound Laundry and Mr. Gazzam. How did that happen?

A. Well, Mr. Gazzam talked from his private office, right adjoining the clerk's office and I heard him.

Q. You made no effort, yourself, to get the Puget Sound to do your laundry?

A. No.

Q. Next is the Quality Laundry and Dry Cleaners in Port Orchard. Did you make any effort to get them to do the laundry work?

A. No.

Q. Why didn't you?

A. I guess mainly because it wouldn't be any use, or Mr. Gazzam was more or less taking care of that.

Q. You testified it was your job to check the laundries and see that that was done. Mr. Gazzam was the owner and you were the housekeeper?

A. Mr. Gazzam was also the manager. He was manager-owner.

[fol. 63] Q. The next one is Shannon's Service Store, listing four separate addresses where they do laundry and dry cleaning. Did you attempt to get any of them to do the laundry?

A. No, that is the same as the City Hand Laundry, isn't it? If they wouldn't do it in one of their institutions, they certainly wouldn't in another. It is all under one management.

Q. Did you make an effort to contact all the Shannon Service Stores at the separate addresses, to do the laundry work?

A. No, I didn't.

Q. The two firms, the Quality and the Shannon Service Store—you made no effort to get them to do the laundry?

A. Mr. Gazzam took care of that.

Q. Well, did Mr. Gazzam ever tell you that they had refused to do the laundry work—that the Quality had refused?

A. The Quality?

The Court: That is the one in Port Orchard.

The Witness: I don't know.

Q. The address is Port Orchard, 510 Bay Street.

A. He didn't mention it.

Q. Didn't mention it. Mr. Gazzam didn't mention the Quality and he never mentioned that the Shannon Service refused to do the laundry?

A. I know he spoke of Mr. Shannon a number of times. They are personal friends.

Mr. Gill: I will offer in evidence, "Defendant's Exhibit No. 2."

The Court: It may be admitted—a list of the laundries in the neighborhood. It may be admitted.

(Whereupon, page from telephone book, was received in evidence and filed as "Defendant's Exhibit 2.")

[fol. 64] Q. You were present during the whole time of this voting on May the 10th?

A. Yes.

Q. And did you know that the union did not desire to have the job that you held there be covered there by their contract?

A. I don't know if I understand what you mean—that they did not desire to have me?

Q. No, the job you did. They did not desire to have your job covered by the contract—desk clerk work—housekeeping work?

A. Yes, I understand. You didn't want anyone in an executive position.

Q. Why did you vote?

A. I didn't.

Q. You didn't vote?

A. No.

Q. You indicated that the bell boy or bell boys voted.

A. Yes.

Q. Did you know that the defendant union had no desire to include that work under their contract?

A. No, I didn't but they talked to them.

Q. Did you know that all the union desired to have included in their contract, so that they could be the subject of collective bargaining, would be just the jobs of the maids?

A. It was my impression that they wanted the bell boys, too, because the bell boys were assisting the janitor. You mean to say you only wanted the maids and not the janitor?

Q. You didn't know about that?

A. It was my understanding that you wanted the janitors and maids, both.

[fol. 65] Q. Are you definite that the picketing started on May the 29th?

A. No, I never said that. I don't remember the exact date. But the date Mr. Gazzam received that letter was the same day.

Q. The date of the first picketing?

A. Yes.

Q. You recall looking at the pickets and that was on the day of May 31st?

A. On May 31st? I thought it began on the date Mr. Gazzam received the letter.

Q. You mean you thought? You mean that is the best of your recollection? To your best recollection, you saw the pickets then?

A. Yes.

Q. Did you read a story on the front page of the Bremerton Sun about the picketing of Mr. Gazzam's hotel, giving his position in the dispute?

A. Yes.

Q. You recall that argument. And didn't it say in that article that on the following day, Mr. Gazzam would be

eighty-three years of age? You remember reading that in that article? His birthday was June 1st, is that correct?

A. I am not sure. I remember he had his birthday very shortly after.

Q. You are not sure of the date of his birthday but you do remember reading in this article that on the day after the picketing, it said Mr. Gazzam would be eighty-three years of age?

A. I remember reading the article but I don't remember those exact words.

Q. Now, in this article, there was numerous reference to Mr. Gazzam's position with respect to this dispute and [fol. 66] the picketing in the article?

A. I can't remember the article verbatim. I remember reading it.

Q. It told Mr. Gazzam's side of the story and it was on the front page of the newspaper. Did you see news reporter come to get his interview of the case?

A. Yes.

Q. You didn't hear the conversation?

A. No, sir.

Q. You have told the tenants and patrons at the Enetai Inn your version of the picketing and how and why the pickets were there, haven't you?

A. I might have.

Q. Lots of them, you have told what the dispute was?

A. I guess probably I have.

Q. Have you explained to the delivery men and the man who comes to deliver milk?

A. I didn't see them because I was at the desk. I would have no way of seeing them. They made deliveries at the back entrance.

Mr. Gill: That is all.

(Witness excused)

[fol. 67] CORDIE ROBILLARD, called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Turner:

Q. State your name, please.

A. Cordie Robillard.

The Court: Where do you live?

The Witness: Seattle.

Q. What is your position with reference to the Enetai Inn, Mrs. Robillard?

A. Bookkeeper.

Q. How long have you been bookkeeper for Mr. Gazzam?

A. Since 1918.

Q. What are your duties at the present time and over the few months preceding say, since the first of the year or before?

A. I wrote out the checks and kept the books.

Q. For the Enetai Inn?

A. Yes.

Q. Are you a full-time employee?

A. No.

Q. How often do you come over to Bremerton?

A. Just once a week.

Q. And when you come over one day a week, your duties are confined to bookkeeping work, are they?

A. Yes.

Q. Describe generally, what you do in the bookkeeping work?

A. Well, I take the cash receipts, enter those, and pay [fol. 68] the bills and enter them, balance the books at the end of the month.

Q. Who makes the postings from the original entries to the ledger?

A. I do.

Q. What do the books of the original entry consist of?

A. Check book and the journal.

Q. Those are here in court, are they?

A. Yes.

Q. I will ask you to identify these. (Handing books to witness)

A. That is the payroll and check book. (Indicating) That is the same, except it is used. (Indicating) That is a previous book.

Q. This one I hold in my hand starts in December of '45 and ends about the end of May, '46. And the one you have in your hand starts May 31st and is still current?

A. Yes.

Q. And that is used for payrolls, is it?

A. Payrolls, only.

Q. Do you make out the checks, yourself?

A. Yes.

Q. You make the entries and the stubs, then?

A. Yes.

Q. Those correctly reflect the payroll and the purpose for which the payroll is paid?

A. Doesn't say whether it is for maid or janitor. We know that.

Q. You know that. Then what is done with reference to getting the entires in the ledger correctly from the check stubs?

A. I post them to the journal and then from the journal to the ledger.

Q. Showing you this check book, what is that?

A. That is the general check book.

[fol. 69] Q. Would items of general expense be paid out of that?

A. Everything is paid out of that.

Q. Everything except the payroll?

A. Yes.

Q. Everything in connection with the operation of the hotel?

A. Yes.

Q. How are cash receipts taken care of in the bookkeeping way?

A. I post them from the cash deposit slips at the bank.

Q. The expense items are also posted from the journal into the ledger?

A. Yes.

Q. You have various expense accounts, I assume, in the ledger.

A. Yes.

Q. Does the ledger reflect all of the items of income and expense for the operation of the Enetai Inn?

A. Yes.

Q. And are these books we have referred to, correct? Do they reflect the true financial condition?

A. Yes, they do.

Q. And you have identified this as the journal entry book. It starts with what period?

A. The first of this year, I believe,—first of last year.

Q. And that runs—and that book is still current, is it?

A. Still current.

Q. Over what period of time do the accounts in this ledger run?

A. They are from the first of this year, outside of where the page is partly used, to goes up—

Q. You know Mr. Stickney?

A. Yes.

Q. Has he had any duty or duties in connection with the Enetai Inn books in the past?

[fol. 70] A. Yes.

Q. What is his function?

A. He figures the income tax and any other special figures he might want.

Q. He is an accountant?

A. Yes.

Q. And he has been the accountant for the hotel for quite a period of time?

A. Yes.

Q. And in connection with this case, you have submitted such records to him as he desired in order to make his computations?

A. Yes.

Q. You have not attempted, yourself, to make a computation to show the amount of loss?

A. No, sir.

Mr. Turner: Now, if the Court please, we have here the same situation as applies to the daily reports. Mr. Stickney is the gentleman who has examined the books and computed the damage, as nearly as it can be computed.

Q. These are the daily books used in the daily work of the hotel?

A. Yes.

Mr. Turner: I prefer not to put them in evidence, but the actual figures Mr. Stickney will produce can be supported from these books.

Mr. Gill: I'm willing to make the same stipulation.

The Court: Stipulating that they may be used. They'd better be marked, with some understanding that some other form of evidence may be substituted in case it is needed in the Supreme Court. Is he going to produce a compila-

[fol. 71] tion taken from the books?

Mr. Turner: Yes.

The Court: The books may be marked, then, to use to check against the compilation.

Mr. Turner: I want a particular page to be used in evidence and then we would substitute a copy. Is that all right?

Mr. Gill: Yes.

Mr. Turner: You may cross examine.

Mr. Gill: No questions.

(Witness excused)

WILLIAM B. MORGANSON, called as an adverse witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Turner:

Q. Will you state your name, please?

A. William B. Morganson.

Q. Will you state your position?

A. Business agent, secretary and treasurer.

The Court: Of the defendant union?

The Witness: Of the Building Service Employees International Union, Local 262, of Bremerton, Washington.

Q. How long have you had that position?

A. Fourteen months.

[fol. 72] Q. Were you the one who actually drafted and filed the complaint against the Enetai Inn, that was filed with the Bremerton Central Labor Council?

A. I was the one that drew up and sent in the letter, stating the action that our organization had taken, to Mr. Holbrook, Secretary of the Central Labor Council.

Q. Do you have a copy of that complaint?

Mr. Turner: (To Counsel) Do you have the original?

Mr. Gill: (Producing letter)

Mr. Turner: Are you offering this, Counsel?

Mr. Gill: We can put it in.

The Court: "Defendant's Exhibit No. 3" may be admitted.

(Whereupon, letter dated May 2nd, 1946, from W. B. Morganson to E. W. Holbrook, was received in evidence and marked, "Defendant's Exhibit No. 3.")

The Court: Is that the paper you are speaking of?

Mr. Turner: Yes. I'd like to have the court read that.

Q. Mr. Morganson, referring to Defendant's Exhibit No. 3, the contract to which you refer there, was a contract which was to be signed between the union and Mr. Gazzam, which would require him to fire all of the employees of the Enetai Inn, who would not become members of the union—otherwise they would be discharged, is that correct?

A. In reference to that letter, there, might I see it, Judge?

The Court: It speaks of an effort to negotiate a contract. Now, he is asking you about the contract.

A. Yes, that is true.

Q. And that original letter, Defendant's Exhibit No. 3, was filed with the Bremerton Central Labor Council?

A. Mailed to Mr. Holbrook, yes.

[fol. 73] Q. And pursuant to that complaint, the Bremerton Central Labor Council scheduled a hearing for May 7th, the notice of which is in Plaintiff's Exhibit "A", I believe? That is this letter that I show you now? (Showing Plaintiff's Exhibit "A" to witness.)

A. That is right.

Q. You were present on May 7th at this hearing of which Exhibit "A" is notice?

A. Yes.

Q. And Mr. Holbrook was secretary of the Central Labor Council and was present at that meeting?

A. Yes.

Q. Do you recall who else was present?

A. Mr. Morganson, President of the Central Labor Council, Charlie Meyer and Mr. Norman and yourself.

Q. Mr. Holbrook opened the meeting by the reading, I think it was, of that complaint of yours, or the letter? At least the subject matter was brought up and then you were called upon for a statement?

A. To follow the policy of the organization, I sent in a letter from my organization to the Central Labor Coun-

cil. Mr. Holbrook would be required, from my complaint, to,——

Q. I wasn't asking for that. At the meeting, the first discussion of the real subject matter of debate, was your statement of the complaint the union had against the Enetai Inn?

A. Which was wages, hours, and working conditions, yes.

Q. You stated in your statement that you had attempted to organize the Enetai Inn and get Mr. Gazzam to sign this contract and he had refused?

A. Correct.

Q. Then I was called upon to make a statement and I asked you whether it was not the fact that you had been [fol. 74] given full opportunity to persuade the employees to join the union and you admitted you had?

A. I did not deny it.

Q. You admitted you were told you could see the employees? You did see the employees and you had no evidence that Mr. Gazzam had hindered you? I believe that was the form of your admission?

A. Yes.

Q. And that you had obtained no signatures from the employees of the hotel, asking for admission to membership into the union?

A. Yes.

Q. And I took the position that so far as wages were concerned, they were not in issue at that time because the union did not represent any of Mr. Gazzam's employees, and so far as the employees, themselves, were concerned, they were satisfied with their present terms of employment?

A. Our position was on the wages and hours. That was our position. And that is why we were interested in organizing the place.

Q. From then on, the rest of the debate was confined to whether or not Mr. Gazzam should be compelled to sign or should not be compelled to sign a contract which would have the effect of making his employees chose whether they would join the union or be discharged?

A. At that date, yes.

Q. And I took the position that that would be coercion, under the state law, and that the employer should not be

asked to coerce his employees? That is the position I took at that meeting?

A. Yes.

[fol. 75] Q. In elaboration of that position, I presented the argument that, as I understood it, it was up to the unions to organize the employees and not for the employer to force them into the union. And Mr. Norman replied that while it was standard union practice to attempt to organize the employees, that the other method had also been adopted—that is, signing up with the employer, first, and requiring the employees either to join or forfeit their positions.

A. The complaint was as to the poorest of working conditions, hours, and wages.

Q. You failed to meet that argument—why Mr. Gazzam should sign such a contract. And then the point was advanced—either by you or by one of the union there—that it would be an advantage to talk to the employees, together. And that resulted in the arrangement of this meeting of May 10th?

A. I deny that statement because, if I remember clearly, I was the one that held out against such a meeting under the roof of the employer, because that was not our policy and never has been our policy. The idea was brought forth by you or someone else. And finally, after holding out regarding that point, I went along with other members of the labor group.

Q. That was actually proposed by Mr. Norman. You objected to it?

A. That is right.

Q. You didn't think it would work?

A. That is right. I was always in disfavor of having the meeting up there.

Q. And there was some discussion as to whether or not Mr. Gazzam should be required to say that he intended to sign up with the union and it was finally agreed that Mr. Gazzam would not be expected to appear at that meeting and tell the employees that he intended to sign up. That was expressly agreed, was it not?

[fol. 76] A. Yes.

Q. You were also present at the meeting of May 10th, 1946, at the Enetai Inn?

A. Yes, Friday.

Q. It was in the afternoon, somewhere around 2 o'clock?

A. That is right.

Q. Do you recall how many members were there representing the union and the Central Labor Council?

A. Six, including myself.

Q. Can you name them?

A. Pat Duncan of the Carpenter's Local; Sam Nance, President of the Building Service Employees International Union, Local 262; E. W. Holbrook, Secretary, Central Labor Council; Charles Meyer, Special Organizor, Building Service Employees International Union, Local 262; Chili Norman, President of the Central Labor Council and business agent for the Teamster's; and myself, Secretary, Business Agent and Treasurer, Building Service Employees.

Q. And the meeting was opened by my statement to the general effect that this meeting had been arranged in order to make it possible for representatives of the union to address the employees in a body, and that Mr. Gazzam was not expressing an opinion on the merits, one way or another. And you gentlemen were there under your own power and would present your own case. That was the general effect of my introductory remarks, was it not?

A. Yes.

Q. And following that, Mr. Norman took over and presided throughout the rest of the meeting, as long as the non-employees of the union were present?

A. You mean, he was semi-chairman, yes.

[fol. 77] Q. Mr. Meyer was the first man to speak, wasn't he?

A. Mr. Meyer was spokesman for the organization.

Q. He spoke?

A. He explained everything to them.

Q. I am not going to ask you to repeat that. I want to shorten this as much as possible. He did speak at length, presenting the union's side of the question?

A. He spoke on unionizing the place, yes.

Q. He was then followed by Mr. Holbrook?

A. Yes.

Q. And Mr. Holbrook's remarks were, in general, to the effect that the union needed them and that they needed the union?

A. It was towards that method of organizing, yes.

Q. And in short, he made an appeal for them to join the union?

A. Yes.

Q. And then Mr. Meyer again spoke briefly, adding a point or so?

A. He addressed them a second time.

Q. Sometime in there, there was a call for questions and no questions were asked?

A. That is right.

Q. And then everyone left?

A. I left, yes.

Q. Well, the employees were left alone and they voted?

A. Yes.

Q. At least, the next thing we knew, all of us were upstairs in the lobby of the hotel, waiting for the vote?

A. Yes, as I stated before, we barely reached the top of the steps, when Mrs. Stapleton came upon us from behind, telling the decision that was reached.

Q. Then everybody left?

A. What?

[fol. 78] Q. Then the union people left the hotel?

A. We left the hotel.

Q. There were no further negotiations, then, between that time and when the hotel was placed on the unfair list and the pickets appeared?

A. That is right.

Q. Were you the one that prepared this exhibit, Plaintiff's Exhibit "C"? Are you the one that prepared this Plaintiff's Exhibit "C"? (Showing witness exhibit)

A. Yes.

Q. What was the basis of this computation or the endorsements on here.

A. Those are the names of the people that were there.

Q. And the dates?

A. The dates. That is the way I paid the different pickets. I had the payroll dated and it was on the checks what dates they were there. Some of them were on a voluntary basis and I have that record there—who volunteered their time and who didn't. Most of those, stated in there, were paid,—some voluntary ones.

Q. This is only a list of the paid ones?

A. No, no.

Q. Maybe I misunderstood you. I am sorry.

A. I said that these that I could check for you, are ones that I paid and the others—that was taken care of by a different method—where the different ones volunteered for half a day, for instance. For myself, I was there practically a week and different things like that.

Q. You are quite sure that May 31st and June 1st were the first two days of picketing?

A. Very sure. I remember very definitely because Fri- [fol. 79] day night I *go* ahold of the Bremerton Sun and there was a big article, explaining about Mr. Gazzam being eighty-three years old the next day, and his position on this picketing and how he was going to help his loyal employees, working for him, and I am very vivid of that date—it was on the 31st.

Q. You have no record that was made at the end of each day of picketing to show whether or not there was a picket on that day?

A. There was a record kept. The picket reported to me in the morning and I told him when I wanted him there and when I didn't and gave them instructions what to do and not to do on peaceful picketing.

Q. You have no record currently made?

A. I kept track of the dates—just checked it and I paid them at the end of each week.

Q. Do you have with you, that record of the first week?

A. No.

Q. In case we should be still continuing with this trial in the morning, would you produce that?

A. I can bring my check book over for the first week.

Q. That is the only record you have?

A. Just out of the check book and what I kept on a separate pad.

Q. It is the separate pad, I want.

A. Okay.

Q. After the picketing started, you either observed personally, or were advised that the Enetai Inn was getting its laundry processed by carrying the laundry in Mr. Gazzam's private car to the City Hand Laundry?

A. I wasn't advised. I saw it.

Q. And when was it that you appeared before the Laundry Worker's Union?

A. I don't know what day it was.

[fol. 80] Q. Wasn't it on the night of Wednesday, June 12th?

A. I still wouldn't know the date—whether it was June 12th, 11th, 15th or what.

Q. But you did appear before the Laundry Worker's Union about that time and asked them not to process the Enetai Inn laundry?

A. I appeared before them but not on just that problem. We happen to have a newspaper to print and that is one way it helped to get it started. Along about that time, for your information, if it is the 12th of June, two or three different organizations had been given talks by me on the penalty——

The Court: Well, the point is, did you ask them to not process the hotel laundry?

The Witness: A question was raised with me about this trouble with the Enetai and I explained to them, the situation. I didn't ask them not to do the laundry. What they did would be their own opinion.

Q. Did you stay there while they took action not to process the laundry?

A. In most of the cases, I ask to go outside.

The Court: Did you in this case?

The Witness: No, I didn't stay while they took action.

Q. You were advised they did take action that they would not process the Enetai Inn laundry?

A. I was advised they were supporting this cause, yes.

Q. And the City Hand Laundry employs members of that laundry worker's union?

A. I couldn't tell you that.

The Court: Do you know if all laundries in Bremerton are union?

[fol. 81] The Witness: Well,——

The Court: Do you know if the employees—the laundry workers, are union?

The Witness: Couldn't tell you that all the employees are.

The Court: I understand that. But you have a general knowledge whether this is a union community.

The Witness: I know it is a union place.

The Court: Are all the laundries in Bremerton, union?

The Witness: Some are on the unfair list, that were——

The Court: —were at that time?

The Witness: It has been that way for a period of months.

The Court: During this period of picketing?

The Witness: During that period. The laundries were getting organized.

The Court: All laundries were organized?

The Witness: Yes.

Mr. Gill: We'll have testimony on that subject, Your Honor.

Q. Mr. Morganson, I will call your attention to this clipping from the Bremerton Sun and ask you if that is the one you refer to?

A. Yes. (Examining clipping)

Q. Is that the one?

A. Yes.

Q. Well, this is dated Friday, June 7th, and yet, according to your own statement, the pickets had been on for some time prior to that?

A. That is right.

Q. So, it is quite possible, if you are connecting the date, May 31st, with the newspaper article, there is quite a lapse of time in there? I mean, according to your testimony, [fol. 82] before you saw this article, you were referring to the time of the starting of the picketing with the time when this article came out in the Bremerton Sun, is that right?

A. May I see that article again?

Q. And this is a whole week after you claimed it started. So, you may be mistaken on the day the picketing first started?

A. It says in that article, that seven days prior to that time, if you read on through the article further down at the end of the article—it says the pickets reappeared again. The first time would be earlier. I think there were two such newspaper articles.

Q. Now, after the picketing first started, there was an interruption of a few days?

A. That is right.

Q. Were you present at any conference that took place in the next few days?

A. I was there when we had the first conference when you called down a conciliator from Olympia.

Q. He was from the State of Washington, Department of Labor and Industries.

A. He held he was a conciliator.

Q. Yes, a labor conciliator. He was there and expected both sides to be present.

Q. You recall where we met?

A. We met in Mr. Holbrook's office, Saturday afternoon.

Q. Who was present.

A. You was present, Mr. Holbrook was present, Mr. Meyer, myself and Mr. Merkel.

Q. And that was on Saturday afternoon, June 1st, is that correct?

A. I'll say, without having any record, that it was the very day after we started picketing.

[fol. 83] Q. Then the respective positions of the two parties were again stated and argued out and they were pretty much as they had been at the hearing at the Central Labor Council on May 7th?

A. You were very vague at that time because, if I remember right, Mr. Merkel was there at that time and asked you what your counter proposal was. You didn't want to discuss hours and wages and sick leave. You were always avoiding these questions.

Q. Well, as a matter of fact, I took the position, again, that you had no authority to speak for the employees until you had employee members in the establishment, is that not right?

A. You took that position, yes.

Q. And so that the only subject of negotiation was whether or not there was some form of contract that could be agreed upon between the parties?

A. Yes.

Q. And at that time, it was the same issue as it had been? The union wanted the contract that would require all of the employees to join the union and wanted Mr. Gazzam to sign such a contract with the union. That was your position?

A. I believe during this meeting you repeatedly brought out about some other union having jurisdiction, which we explained that we had jurisdiction over these maids and those employees in the hotels and there was no other new organization covering that. And then you asked us also

about an organization that could be formed inside of the Enetai Inn. That was a company union you had reference to.

The Court: The point is: You insisted upon the contract, by the terms of which all the employees—that is, the maids—would be required to join the union?

A. At that time, yes.

[fol. 84] Q. After discussing that point for some period of time, it was finally agreed between us that I would take the matter up with Mr. Gazzam and would advise Mr. Merkel as soon as possible and in any event within not over five dyas, however, if Mr. Gazzam would be willing to go into the signing of the contract. You recall that you agreed you would take the pickets off during that time?

A. For a few days, three, four, or five days. I don't recall.

Q. The point was: I was to get right at it and advise you as soon as possible?

A. Through Mr. Merkel.

Mr. Turner: Now, do you have the original of that letter from Mr. Merkel or can we put in a copy?

Mr. Gill: We have a carbon copy.

Mr. Turner: Well, I will put in a carbon copy.

Q. You were advised in the letter to Mr. Merkel, at that time, were you?

A. Yes.

Q. Showing you Plaintiff's Exhibit "D" and I'll ask you if this is a copy of the letter I wrote Mr. Merkel? You recognize that as a copy of that letter?

A. Yes.

Mr. Turner: And I think it will be stipulated between the defense and plaintiffs that the original was on my law office letterhead and that the original was signed by me.

Mr. Gill: We'll agree that may be received.

The Court: It may be admitted, Plaintiff's Exhibit "E".

(Whereupon, letter to Mr. Merkel from Mr. Turner, was received in evidence and filed as Plaintiff's Exhibit "E".)

Q. And immediately upon receipt of that letter by Mr. Merkel, I say immediately—I mean, promptly—the pickets [fol. 85] were replaced, were they?

A. I wouldn't say right at that minute.

Q. I didn't say, "right at that minute." I said "promptly."

A. They were put back on, yes.

Q. And at no time since the Enetai Inn was first placed on the unfair list, has it ever been removed from that list, has it?

A. It hasn't been removed from the unfair list.

Q. It is still there?

A. It's there today, yes.

Q. You recognize Plaintiff's Exhibit "F", Mr. Morganson?

A. Yes.

Q. Who is the publisher of that paper? Who is the editor?

A. Mr. Charles Meyer and myself.

Q. That is one of the defendants in this case, Mr. Meyer?

A. Yes, and myself, William B. Morganson.

Q. Is that a private venture or is that done as part of the functions of the Building Service Employees Union.

A. You don't have a private venture as a business agent.

The Court: It is not a private venture? Is that your answer?

The Witness: It is done as union agent.

Q. The fact that your name and that of Mr. Meyer appears on the masthead doesn't mean that that is an individual concern at all?

A. That is right.

Q. It states right on the masthead that that is the official publication of the A. F. of L., Local Number 262. That refers to the defendant union in this case?

A. Yes.

Mr. Turner: Plaintiff will make a qualified offer of Plaintiff's Exhibit "F," reserving the right to challenge or [fol. 86] dispute statements in the article contained in that paper to the effect that the Enetai Inn is unfair. The purpose of the qualified offer is to show the extent of the activities of the defendants in this case to damage and injure the plaintiff's business. But by the offer we do not concede the truth of all of their allegations in the article.

The Court: You just offer it to prove the article.

Mr. Turner: To prove the article.

Mr. Gill: No objections.

Mr. Turner: I think that is all.

The Court: Plaintiff's Exhibit "F" may be admitted.

(Whereupon, a newspaper, Peninsula Laborite, was received in evidence and filed as Plaintiff's Exhibit "F".)

Cross examination.

By Mr. Gill:

Q. Mr. Morganson, showing you Defendant's Exhibit No. 1, I ask you what this document is.

A. Well, after——

Mr. Turner: Just a moment, please, I will object to it as not being proper cross examination. If it is a matter of the defendant's case, that is all right, but it's not covered by the direct examination.

Mr. Gill: Very well, I will withdraw the question.

Q. At this meeting you referred to, that took place in Mr. Turner's office, did you submit any proposed union [fol. 87] shop clause to Mr. Turner?

A. We presented him with the regular union agreement.

Q. Answer me "Yes" or "No."

A. Yes.

Q. You hold in your hands, that document you presented to Mr. Turner?

Mr. Turner: I am going to object to the introduction of attempted negotiations following the placing of the hotel on the unfair list, the attempt to get it off, and the results of the picketing, because those are matters that didn't have anything to do with the initial declaration that the defendant was unfair to organized labor. The subsequent attempts to negotiate did not result in agreement and any attempt to reach a compromise, which did not result in compromise, is not material.

Mr. Gill: I disagree with that contention. If it didn't come within the rule to show attempt to compromise, then it comes within the right to show a dispute.

The Court: If it is an attempt to minimize damages, if damages are recoverable, it is all right.

Mr Turner: Then it should come in at another time and shouldn't come in as part of cross examination.

The Court: What was the question?

Mr. Gill: He was at that meeting. He brought up the meeting.

Mr. Turner: It can go in as part of their case.

Q. At this meeting in Mr. Turner's office, you have already testified to, did you submit to Mr. Turner, a proposed union shop clause in a written document?

A. Yes.

[fol. 88] Q. Showing you what is marked for identification as Defendant's Exhibit No. 1, I ask you if that is the document you submitted?

A. This wasn't the first one we submitted. What I mean is, we submitted a regular union agreement and then discussed the other phases of our union agreement and there was such a bone of contention with——

Q. I am not asking you to explain the document. I am asking you if this is the document you submitted to Mr. Turner in Mr. Turner's office during this period of time?

The Court: What time?

The Witness: This was the second meeting we had with Mr. Turner in his office.

The Court: I haven't the date, definitely.

The Witness: This is dated June 22nd.

The Court: Shortly after that, it was submitted?

The Witness: Yes.

Q. That is the document you submitted?

A. Yes.

Q. Well, you previously stated in answer to Mr. Turner's question, that you submitted at this meeting in Mr. Turner's office, a proposal, requiring all of the employees to join the union?

A. Yes.

Q. And you later submitted what is marked for identification as, "Defendant's Exhibit No. 1"?

A. Yes.

Mr. Gill: I offer in evidence, Defendant's Exhibit No. 1.

Mr. Turner: Same objection.

The Court: Overruled, it may be admitted.

(Whereupon, agreement under date of June 22nd, was received in evidence and filed as "Defendant's Exhibit No. 1.")

[fol. 89] Q. Now, Defendant's Exhibit No. 1 does not require that the present employees join the union but requires new employees to join the union within fifteen days?

A. Yes.

Q. What did Mr. Meyer say at this *at this* meeting, when the vote was taken, on May 10th?

A. His opening address?

Q. Yes.

A. He was introduced. His opening address, he introduced himself and he explained to these people that he was there representing,——

The Court: I don't want to interrupt, but what difference does it make, all this? The whole question, as I see the case, is whether or not this picketing was lawful or unlawful. I don't see that who made the speech or what he said at the speech has any bearing.

Mr. Gill: But it was in the presence of Mr. Turner. Mr. Turner was spokesman for Mr. Gazzam.

The Court: They didn't get together, though.

Mr. Gill: This is a statement of Mr. Meyer of what the union wanted and Mr. Turner didn't agree to it or disagree.

The Court: You think it has any bearing? All right, go ahead.

Mr. Gill: They deny there was any dispute about hours, wages and working conditions.

The Court: But, from the witness, I have already gathered that he wanted to state that there was definitely, a dispute.

The Court: But what Mr. Meyer said in his speech——

Mr. Gill: In the presence Mr. Turner. I wouldn't offer it otherwise.

[fol. 90] Q. What did he say at the meeting of May 10th, with respect to what the union wanted?

A. He explained about our union contract, which included a forty-hour week, five days a week, eight-hour day, time and a half for the 6th day. He explained what his union arrangements was; told what the housing authority employees were getting and employees at the city theatres in Bremerton. He explained about sick leave and about annual vacation on the basis of a day and a quarter a month,

averaging fifteen days per year. He explained the seniority clause and also brought out how a place like that, with people working at 55 cents an hour affected our other members, who were unionized, earning 85 cents an hour.

The Court: Before going into that, your union scale is 85 cents an hour?

The Witness: In the housing authority.

The Court: That applied to hotels?

The Witness: We have no hotel in Bremerton, organized.

The Court: You sought to apply it to this particular hotel, and they were getting how much?

The Witness: Fifty-five cents an hour. Mr. Gazzam paid them $26 a week and that was for a forty-eight-hour week, which is an extra day a week, and explained to them the necessity of organizing—that that affects our people in that field of work, when they work at that wage rate and for a forty-eight hour week because wherever we went, the people used their wage scale against ours. Also, our membership with the housing authority were forced to be getting jobs in hotels and they didn't like the job of going back to work at 55 cents an hour and fifty cents an hour, [fol. 91] when they had been earning eighty-five cents an hour and getting a forty-hour week and time and a half for overtime and holidays and with sick leave and vacation time. But by them people joining our organization and by them having an organization speaking in their behalf, it would benefit them and also would help labor, as a whole, in Bremerton, instead of supporting fifty-five cents an hour —a disgusting wage scale to pay to a human person.

Q. In the presence of Mr. Turner, that was said?

A. Yes.

Q. Did he agree or disagree with it?

A. He never said anything, whether it was true or false.

Q. Did Mr. Meyer tell the employees anything with regard to what their working conditions would be under the union, as to sick leave and holiday pay,——

A. What's that?

Q. Did Mr. Meyer tell the employees at that meeting what they were receiving with respect to vacations, sick leave, and pay holidays?

A. What our people was getting, yes.

Q. Now, did he state what the employees of the Enetai Inn were getting with regard to those conditions?

A. He explained, it, yes.

Mr. Gill: That is all.

[fol. 92] Redirect examination.

By Mr. Turner:

Q. Mr. Morganson, did you tell the employees about all these benefits, or did Mr. Meyer tell the employees of the Enetai Inn?

A. Mr. Meyer spoke in front of the group.

Q. About the rate provided in the contract that the Building Service Employees Union said was being paid other places, do you know if the Y.M.C.A. in Bremerton pays that wage scale?

A. No, they don't.

Q. That is right.

Mr. Gill: Just a minute. I am going to object to the question.

The Court: That is what I was afraid of—that we were getting off on a tangent.

Mr. Turner: I think the whole thing is immaterial.

Mr. Gill: What was the court's ruling.

The Court: Objection sustained. We've gone far enough into this angle.

Q. At these preliminary meetings, I sought to show that the main question, if not the only question was the question of whether or not these employees should be a member of your union. Wasn't that the main question?

The Court: Were there other questions involved in the negotiations between the labor representatives and Mr. Turner, representing Mr. Gazzam?

The Witness: Our whole argument, at all times, was, and [fol. 93] when we met with Mr. Turner the first time, was the wages that this man was paying and the hours his people was working and the conditions in there.

The Court: You had some interest in the wages,——

The Witness: Certainly. We recognize that as long as people were working for lower pay, that it was hurting us.

The Court: Wages and hours and working conditions and vacations and sick leave were the matters discussed?

The Witness: They were of primary importance.

The Court: I understand. And they were discussed?

The Witness: Yes.

The Court: Every time?

The Witness: Every time.

The Court: Were they ever discussed with Mr. Gazzam?

The Witness: They was discussed the first time Mr. Meyer and myself held a meeting with Mr. Gazzam

Mr. Gill: I want to ask a question but not over objection of counsel. I am not sure whether Mr. Turner brought up the matter of the first Gazzam meeting with the witness. Well, I will withdraw the question, then.

Mr. Turner: In view of the position taken by the witness, Your Honor, that the wages paid at the Enetai Inn were a legitimate subject for this union to take up, even with the understanding that there was no union member among those employees, how can they claim they are injured by this situation in their efforts to negotiate with other——

The Court: The cross examination brought out that the union has existing contracts with other establishments, showing a lower scale than he claims was the established scale—that that is a matter of agreement between the union [fol. 94] and the employer. At any rate, we are not concerned with that. The holding in this state and other states is to the effect that the labor groups have a right to call attention to the public, by peaceful picketing and not en masse, to anything they consider detrimental to their members, performed by any employer of labor, regardless whether there is a union member inside or not. That is my understanding of the law at the present time.

Mr. Turner: No question about that, of course,——

The Court: Then what is there that you contend that these people did that they did not have a right to do?

Mr. Turner: It is my understanding that the underlying motive here, was the fact that Mr. Gazzam wouldn't sign up with the union. That is really the reason they did strike.

The Court: Don't the decisions even go that far?

Mr. Turner: I don't think so.

The Court: That is the one question in this case—only one question—the dispute of law is whether or not they have a right to demand him to sign the union contract and if they haven't that right, then the question still remains: Have they a right to picket his establishment to advertise to members of their organized labor groups and to the public, that this employer is unfair because he is paying less wages or for many other reasons?

Mr. Turner: That would be a secondary question. I mean, that that would be the secondary question that the [fol. 95] defense would raise. And, of course,——

The Court: It is not for this court to determine what is a fair wage. I have nothing to do with that. The only thing I have to determine—I am not sure, but let's assume it is—is as to whether or not the wage that was being paid was a question of discussion between these parties.

Mr. Turner: Of course, it is our position they have no right or authority to raise this issue until they have the authority to represent the employees, themselves.

The Court: I can't agree.

Mr. Turner: Then, if the court is going to disagree with that theory of law, then I submit it is proper for me to examine the witness on whether or not it was in fact an injury to them, that this wage was being paid in view of the contracts that were in force at the time of this meeting between this union and other employees, providing for a comparable wage to that paid by the Enetai Inn. I think it would be relevant to examine on that issue.

The Court: What right has this court to enter into that situation?

Mr. Turner. I think it has some bearing, if the court determines as to what was the real reason for placing the pickets there.

The Court: I don't want to limit it. I want you to make as complete a record as you can. You may go into it—to a limited extent.

Q. At the time of the meeting before the employees of the Enetai Inn on the 10th of May, this year, wasn't there in fact a contract in force between the Building Service Employees Union, Local No. 262 and the Y.M.C.A., providing [fol. 96] for a wage scale, very much less than this wage

scale that you testified to here a few minutes ago, which was the union scale of eighty-five cents an hour?

Mr. Gill: I object to that. It's immaterial.

The Court: Overruled. He may answer.

A. There was a union agreement with the Y.M.C.A.

Q. Yes. What was that wage?

A. Sixty cents—seventy-five cents an hour.

Q. The lowest bracket there was for sixty cents an hour?

A. Yes.

Q. And that was enforced at that time?

A. Yes.

Q. And the wage rate immediately preceeding that, which was in effect until the first of this year, was 52 cents?

A. Where at?

Q. At the same establishment, Y.M.C.A. in Bremerton.

The Witness: Well, Your Honor,——

Q. Answer the question, "Yes," or "No."

The Court: Answer, "Yes," or "No."

A. No.

Q. Isn't it a fact that this union had a contract with the Y.M.C.A., which expired on December 31st, 1945, providing for a bottom scale of 52 cents?

A. No.

Q. What was the bottom scale, provided for that establishment?

The Court: 1945?

Mr. Gill: Objected to as immaterial.

Mr. Turner: That is only five months prior to the time of this meeting and only——

The Court: No—we have reference to a contract in force at this particular time.

Mr. Turner: That is all.

(Witness excused)

[fol. 97] W. L. Gazzam, plaintiff, being recalled on his own behalf, was further examined and testified as follows:

Direct examination.

By Mr. Turner:

Q. Mr. Gazzam, following the picketing, what effort did you make to find a commercial laundry to handle your hotel

laundry, following the refusal of the City Hand Laundry to pick it up and deliver it, and later on, to process it? What efforts did you make to get the Enetai laundry handled by a commercial laundry?

A. I asked the other laundries—larger laundries and tried to get them to do the Enetai laundry, and that was denied. Mr. Shannon of the City Hand Laundry owns the Quality Laundry, you spoke about, and the French Cleaners, and that Shannon's Service Store, and he declined.

The Court: Did you try any other laundries?

The Witness: I tried the larger laundries—the Puget Sound Laundry, and they refused. I finally found a wash house over in Bremerton—Manette, that I got by with.

The Court: You mean, you bought the laundry?

The Witness: I bought the machinery.

The Court: It wasn't operating as a commercial laundry?

The Witness: It was operating as a wash laundry—carry your own laundry.

Q. That was the only way you were able to get anything done?

A. Yes.

[fol. 98] Cross examination.

By Mr. Gill:

Q. You know these two other firms, Valley Cleaners and Hood Cleaners—both of whom do laundry?

A. They are not laundries. They are cleaners.

Q. Did you make inquiry whether they would do laundry?

A. No, they are not able. They don't have the proper machinery.

Q. Now, how do you know they were unable to do laundry?

A. I knew they were.

Q. How did you know?

The Court: Is that the Hood Cleaners in Port Orchard?

The Witness: No, Hood Cleaners in Bremerton.

The Court: There is one here, I know.

Q. And the Valley Cleaners. How do you know they were unable to do laundry?

A. They couldn't do it. They didn't have the proper equipment.

Q. You know that, is that it?

A. I know positively, because we had to invest a lot of money into a new set of machinery to do the laundry. And I wouldn't have done that if there were a laundry, available.

Q. You know they are non-union firms?

A. I am not familiar with that. But they are very small. A place has to have equipment to do a hotel laundry—do it up and get it back.

Q. You know they were non-union firms?

A. I don't know the two firms you speak of. I don't know them, except the one on 6th Avenue in Bremerton.

[fol. 99] Q. Your statement is that they can't do your work and you haven't shown how you know.

A. Well, they weren't properly *equippment*.

Q. You say you don't know anything about these firms. How do you know?

A. They were small cleaners, as I understand it.

Q. The truth of it is, you don't know what equipment they have?

A. I know they are not large enough to handle our business in my judgment.

Mr. Gill: That is all, Mr. Gazzam.

(Witness excused)

Mr. Turner: At this time, plaintiff desires to file a supplemental complaint.

The Court: Any objections.

Mr. Gill: I hardly know what to say. Mr. Turner said over the telephone he would. And I was very hopeful I would have this information before this—but here he is serving this document on me at 15 minutes to 4:00,——

The Court: It is raising no new issue, is it?

Mr. Gill: Except he has put the burden upon us in this claim for $1100 additional damages.

The Court: It may be filed.

Mr. Gill: I think, though, that I should ask for a continuance if I am harmed.

The Court: You are not asking for it now?

Mr. Gill: Not at this moment.

[fol. 100] C. L. STICKNEY, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Turner:

Q. State your name, please.

A. C. L. Stickney.

The Court: You live in Bremerton?

The Witness: Olympia.

Q. You are an accountant, Mr. Stickney?

A. Yes.

Q. How long have you followed that profession?

A. Since the year, 1928.

Q. Will you state your experience and qualifications?

Mr. Gill: I'll concede his general qualifications.

Mr. Turner: Thank you.

Q. You have conducted an accounting service for a period of years?

A. About five years.

Q. And you have performed as an accountant for Mr. Gazzam?

A. Yes.

Q. You are familiar with his method of bookkeeping and his books?

A. Yes.

Q. You did no actual bookkeeping, yourself?

A. None, whatever.

Q. That was done by Mrs. Robillard, and you examined the records kept by her?

A. Yes.

Q. Have you made an examination of the records of the Enetai Inn to determine the loss in profits, as the result of [fol. 101] the picketing and listing of the hotel as unfair?

A. Yes, I have.

Q. Will you state what you did in making that examination?

A. From the records, that is, the general books, consisting of the check books, journal and general ledger, I determined what the expenses were for the first part of the year.

The Court: 1946?

A. Yes. And from the daily rooms reports, which I have examined sufficiently to know that they truly reflect the daily income, accruing from the rooms, I have made a calculation of the income received during the fifty-three days affected by the picketing and also during the preceding fifty-three days before the picketing. And from that information, I have prepared this computation, which I submitted to Mr. Turner, of the loss in net profits, which, it appeared to me, was due to the picketing.

Mr. Gill: I am going to move to strike the witness' last statement, as a conclusion.

The Court: It may stand. He hasn't given any figures, yet.

Q. Mr. Stickney, I show you Plaintiff's Exhibit (for identification) "G," and ask you if that is the compilation you made.

A. It is, Sir.

Q. You have another copy of that. I have one before me. Suppose we hand this up to the court and then you and I will look over Mr. Stickney's shoulder, Mr. Gill.

The Court: Are you going to offer it in evidence?

Mr. Turner: I was thinking I was going to put it in after the testimony is in. I am forming the basis of it, now.

The Court: All right.

Mr. Turner: That is what I was leading up to; Your Honor.

[fol. 102] Q. Now, the fifty-three-day period ending July 20th, 1946, is the period from May 29th to July 20th, 1946, is it?

A. It is the period, May 29th to July 20th. It would be the fifty-three-day period starting from the close of business on May 28th and the beginning of business on May 29th——

Q. That was what I was trying to figure. And then the fifty-three-day period ending May 28th, would include the business of May 28th, before the pickets started?

A. Yes.

Q. You have, under "Income," "Room rentals accrued." Is that figure taken from the Daily Reports?

A. It is taken from the Daily Rooms Reports.

Q. That does not necessarily represent actual cash receipts, does it?

A. It just about does, because *there* bad debts but they are insignificant, and have been, for some time.

Q. Over a period of time, that would average up all right?

A. Over a period of time, that would work out, absolutely.

Q. But if a person paid a whole week in advance or at the end of the week of occupancy, it wouldn't show as a solid, single payment on the room report?

A. No.

Q. Why did you use "accruals" instead of "cash receipts"?

A. Because using "accruals" would more truly reflect income. The accruals show the actual occupancy of the room, and shows the amount it would show for the guest, for occupancy, each day. So I use accruals at the beginning and end of the period to arrive at the same identical figure. The alternative you mentioned, would have been the cash receipts. For the cash receipts, you would have to add and subtract the various amounts.

[fol. 103] Q. But the accruals reflects the actual occupancy?

A. Yes.

Q. Now, coming to the classification of "Expenses." Is that on accrual or on a cash disbursement basis?

A. On an actual cash disbursement basis, which reflects the actual life and disbursement of equipment.

Q. Now, how did you determine the expenses for these two periods?

A. By taking the average expense per day of the first six months of 1946.

Q. So, this is an average figure you have used?

A. As to expenses, yes.

Q. Why was an average used instead of just actual expenses disbursed during the period in question?

A. Because the average would more truly reflect the actual amount because so many expenses are used in large lumps—such as real estate taxes and new linen purchased, and things of that kind, which are not bought at regular intervals and paid for at regular intervals.

Q. Do the figures you have listed there on Exhibit "G" under the two expense columns, reflect the correct computations as taken from the books of the expenses, pro-rated to those two periods?

A. They do, as far as I can determine, yes.

Q. Did you take those figures from the ledger?

A. Yes.

Q. The expense figures?

A. Yes.

Q. Do the expenses listed there—well, listed under the heading for the period, not affected by the picketing—those are items that you classified as all of the expense items [fol. 104] that would not be affected, is that right?

A. They are not affected, and they are according to the average. The next category affected by the picketing is the actual expenses. We determined from the laundry bills, themselves, what was spent for laundry during these fifty-three-day periods.

Q. Could you determine from your examination of the books whether or not any of these books of expense included under the bracket not affected by the picketing, were or were not affected?

A. From a full discussion with *Mr.* Robillard and Mr. Gazzam, it appeared to me they were not affected by the picketing.

Q. In other words, they were standard items of expense that had to go on, anyhow?

A. To maintain a hotel of that size, yes.

Q. How would the laundry be affected by the picketing?

A. Because Mr. Gazzam had to make other arrangements—not through the ordinary laundries in Bremerton, that took the care of his business prior to the picketing. This expense, which shows only twenty-three dollars and some cents' increase on account of laundry—that is the actual out-of-pocket expense. It does not reflect the amount of money he put into capital expenditures to have his laundry done at this Manette place. Mr. Gazzam put out considerable money on that, but he still owns the machinery, so that is not included in that expense.

Q. You couldn't take care of that as an expense item until he had established a loss on the capital?

A. No.

Q. None of that is included in this?

A. None of the capital expense.

Q. What is included in the laundry figure in Exhibit "G"?

fol. 105] A. The actual money paid to the regular laundries he has used in the past, and the money he used for the doing of the laundry by Mr. Montgomery, I believe.

Q. And how about salaries? Mrs. Stapleton testified, I believe, that the maids were doing the Enetai laundry only on their working time, and were receiving extra compensation for the laundry work. Was that segregated or was that included under "salaries"?

A. That fifteen cents an hour, extra compensation, was included in the laundry cost.

Q. So that the salaries item in the upper classification, was just the salary for maids and regular salary?

A. That is correct.

Q. Under the heading of "Other Income," will you explain those figures?

A. Under "Other Income," is the net receipts from the news stand. We took the news stand receipts—that is, merchandise sold. We took 78 per cent of the sales as a cost of merchandise figure, which is fairly accurate. They have searched through the previous year, because no inventory was taken at the end of the picketing, and I think that is substantially correct. It shows that during the period of picketing, there was a net profit of $137.95, which was made. And during the preceding fifty-three-day period, $186.30 was made.

Q. There is no expense other than the cost of merchandise under that?

A. No.

Q. That includes magazines, cigarettes, candy, and things of that nature?

A. Yes, handled by the desk clerk.

Q. So that the profit is the gross receipts less the cost of

fol. 106] the merchandise?

A. Correct.

Q. In making up this comparative statement of two fifty-three-day periods, did you assume that the fifty-three-day period ending May 28th, 1946, was normal business, so far as income was concerned?

A. No, sir, we did not assume it was. I went to the trouble of taking fifty-three days after the picketing period

and found it came within $3.50 of being the same as the fifty-three days before, so that is the reason I used the prior, because it appeared normal, after making this comparison with the fifty-three days after.

Q. In other words, the room rentals and trade during the subsequent fifty-three days, were just about the same as the prior fifty-three days?

A. They were several dollars more—about $3 more.

Q. Does this comparative statement reflect any series of "capacity houses" that might result from the arrival of a large ship?

A. No, sir, because there were no large houses during the period shown on this report nor the fifty-three days after this report.

Q. How much is the capacity house? Do you have the figures on that?

A. As far as we can determine, in consultation with Mr. Gazzam and Mrs. Robillard, I made a computation of the possible capacity house of $303.20. However, during the year, 1946, the highest house was February 4th, which was $273.54.

Q. Will you refresh your recollection from this tape, (Handing tape to witness)—you prepared that tape yourself?

A. Yes, I ran this tape.

Q. Did you recall whether there was such a house as full as $273.54 during the fifty-three-day period preceding the [fol. 107] picketing?

A. No, sir, there was not. The highest appears to be $260.53. That appears to be the early part of May or about April 27th.

Q. That is only for a single day at that time?

A. That is only a single day.

Q. So, if a large ship, which would be in the Bremerton Harbor for several days, should arrive during this period of picketing, and the hotel would not be able to accommodate the guests during that period, this comparative statement would not reflect the loss incident to that?

A. No, sir.

Q. At the bottom of this statement, you have listed the actual expense for the whole first six months, as taken from the books?

A. Yes, I have.

Q. On the basis of this comparison, you have duly checked against the succeeding fifty-three day period. You have computed the decrease in net profits, during the period of picketing, at $1466.28, is that correct?

A. Yes.

Mr. Turner: I'd like to offer Plaintiff's Exhibit "G" in evidence.

Mr. Gill: No objections.

The Court: It may be admitted.

(Whereupon, computation referred to, was received in evidence and filed as "Plaintiff's Exhibit G".)

Q. Mr. Stickney, assuming that a large ship like the Iowa should come in during the period of picketing and stay for a period of say, two weeks, resulting in full houses, as large as any during the current year of 1946, is there any way of [fol. 108] computing—strike that, I'd better start over again. Mr. Stickney, assuming that during the period of picketing, a large ship would come in to the harbor at Bremerton and should remain for a period of approximately two weeks or longer, and that the demand for transient accommodations for the Enetai Inn was such, for a period of at least two weeks, that the house would be as full as the largest house that you found during the current year, 1946—and assuming further, that these additional guests would have to be turned away because of the lack of available linen, would there be any way of figuring the loss of cash?

A. Yes.

Q. Would you explain the method and how much that would be?

A. I would arrive at it by taking the average income, per day, during the period preceding the picketing, amounting to $224, from the capacity house on February 4th, of $273, which is a difference of $49—and for two weeks, that makes 49 x 15, which would be $735, additional income, would have been realized, had the Enetai Inn been filled to the capacity, as it was on February 4th, the highest day in 1946.

Q. Those figures are based on room accruals, only?

A. Yes.

Q. Any additional income from the news stand would be on top of that?

A. Yes, they would.

Mr. Turner: You may cross examine.

[fol. 109] Cross examination.

By Mr. Gill:

Q. Do you know whether there was a ship in port on February 4th?

A. No, sir, I don't.

Q. Do you know why February 4th was the high income day for the hotel?

A. I do not.

Q. Having been Mr. Gazzam's accountant for the past five years, you have been familiar with the ups and downs of the business?

A. Yes, the last two years, there weren't many downs.

Q. The last year, there had been quite a bit of a down trend?

A. Well, there has been, in the past month or so. There has been a down trend, yes.

Q. Now, there was testimony this morning that the payroll at the navy yard decreased about from 32,000 to 10,000. Have you noticed in your inspection of the books whether or not that downward trend in employment affected the business that was done at the Enetai Inn?

A. Yes, it did. I made no calcu*tajon* of this, specifically, We have an earlier calculation, where I show the profit is off considerably more than the damage, claimed.

Q. The profit is off more——

The Court: What is that?

The Witness: I say, Your Honor, the profits are off during 1946, considerably more than the damage claimed because of the general business situation.

The Court: Damage claimed by whom?

The Witness: By the owner—the damage claimed——

The Court: As a result of the picketing?

The Witness: Yes.

[fol. 110] The Court: In other words, the fifty-three days following the picketing, they weren't off at all?

The Witness: They were off the same amount as the fifty-three days preceding the picketing.

The Court: I understood you to say that the fifty-three days following the picketing was the same within three

dollars and something of the fifty-three days preceding the picketing? So they weren't off the fifty-three days after the picketing?

The Witness: They remained about the same after the picketing went off.

The Court: When did they begin to go off?

The Witness: I should say, earlier in the year the gross receipts were off.

The Court: Earlier, what year, 1946?

The Witness: Yes.

Q. As compared to the net profits of a year ago this same time, would the net loss in net profits much larger than the amount claimed?

A. The decrease in net profits during the year, 1946, greatly exceeds the amount claimed for damages.

Q. That is as compared against 1945?

A. Yes.

The Court: Well, the decrease in business would be general?

The Witness: Yes, naturally the gorss business would have to decrease.

The Court: That would be naturally reflected in the net profit. So the decrease in business began before the year, 1946, came in, or about that time?

The Witness: Well, I am not certain.

[fol. 111] The Court: It has been gradually declining?

The Witness: It has been apparent particularly this year.

The Court: That is what I don't understand. It's a little difficult for me to understand why it came back immediately in three fifty-three-day period or 159 days—pretty nearly five months. Five months. The last of the five months, which would be August or September, was approximately the same as the first of the five months, which would be March or April.

The Witness: We wondered at that, but the gross receipts——

The Court: Isn't there some other explanation of that? In other words, there has been a gradual decrease in business, beginning the early part of '46?

The Witness: Due possibly to the arrival of some large ships.

Mr. Turner: As long as the court has mentioned that point, and counsel—I want to say that I can't explain why that is. From the statements made privately in the preparation of the trial, we assumed that we were going to have a lesser profit during the succeeding fifty-three-day period than we had previously, but the figures show they come right out even. We can't help that.

The Court: About the same. Just roughly, what are the receipts, running down—comparing them with those running in August.

The Witness: If you have the day,——

The Court: I just wondered if you had any idea.

Mr. Turner: Has the court examined the daily reports?

The Court: Is that from the 1st of May to the end of August?

Mr. Turner: And I have here, the daily reports for [fol. 112] October,——

The Court: There isn't a great deal of decrease the 1st of September, anyway.

The Witness: I hadn't examined those, Your Honor.

The Court: I haven't stated that accurately. I'm just running through. Well, all right, I didn't mean to interrupt.

Q. This figure in the first column for the fifty-three-day period, ending July the 20th, the twenty-three hundred dollars is a net profit?

A. Yes, for the period. And then the preceding fifty-three days, it shows a net profit of $3765.47.

Q. The difference between those figures is the co-called loss?

The Court: Plus the news stand—other income?

The Witness: Yes.

Q. And adjusting for that other income, the total loss is——

A. $1466.28, calculated loss.

Q. That is the way you get the figure of calculated loss. But you are unable to explain the peculiar circumstances—that the business was done in thirds and you say, the first and third fifty-three day periods are only off three dollars.

A. They were practically identical.

Q. Does that indicate any factors that involve the business, other than picketing and unfair listing?

A. There are always those factors.

Q. It's impossible to estimate those factors at any particular time?

A. To accurately do so, yes.

Q. In other words, when you get the figure, $1466, which you first attributed as a loss due to the picketing—might it not be due to the weather in part?

A. And picketing could be greater than that or less [fol. 113] than that. That is the closest we can get by the available information.

Q. Do you understand as a general proposition, there has been an outward trend of the local population in recent months in the Bremerton area?

A. I have heard about that. I don't live in Bremerton.

Q. The books show that?

A. It shows the receipts are off, but it doesn't show what the population of the city is doing.

Q. Already, several witnesses testified that the people who normally stayed at the Enetai Inn, did not return to the Enetai Inn after the picketing ceased. Now, from your figures, particularly that third fifty-three-day period, indicates that some strangers are coming in and staying at the hotel?

A. As I am not conversant with those facts, I'm not in a position to say.

Q. As I understand it, you and I are both hopeless in explaining these unknown elements that account for the third fifty-three-day period being on a par, pretty much, with the first fifty-three-day period?

A. Why, it would be impossible, unless a great agency of men were keeping track of the general population, to arrive at accuracy.

Q. As far as unknown factors are concerned, it is quite possible that the second fifty-three-day period could have covered the highest amount of the business—that is, the period of picketing?

A. Now, what is that?

Q. Now, it is entirely possible, due to the presence of unknown factors, that the second fifty-three-day period could have been the highest period with regard to income?

[fol. 114] A. It is possible, yes.

Q. Which would indicate that other factors were larger in force than the negative influence of the picketing?

A. No, sir, I wouldn't go into that. That is too speculative. I couldn't know that.

Q. It is speculative?

A. The whole estimate is speculative, but I think, quite reasonable.

Q. Now, you have taken the actual expenses for the first six months of 1946 and you have itemized your figures. Did you break those figures down and segregate them as to your two fifty-three-day periods?

A. Advertising is $561. I have applied it down there—the same to each period, because it is pro-rated—53/182 of that figure, right there.

Q. Due to the fact that there were a number of rooms blocked off, as the testimony will show, because of inability to get linen, would that not cut down on the fuel bill—light bill?

A. Possibly not, because as the year goes on down, with warmer days, the fuel is cut down, so it is hard to determine those relatively small expenses.

Mr. Gill: That is all.

[fol. 115] Redirect examination.

By Mr. Turner:

Q. Mr. Stickney, if you assume that the fifty-three-day period prior to May 29th be taken as a normal period, and if you assume that the fifty-three-day period commencing May 29th—both for the year, 1946, be taken as a period of normal operation, what your guests demand, and if you further assume that there was no reason for refusing the guests, other than during the picketing, which brought around the laundry difficulties,—on the basis of those assumptions, is that compilation an accurate compilation of the amount of loss of profit?

A. I believe it to be an accurate compilation.

Mr. Turner: That is all.

Recross examination.

By Mr. Gill:

Q. One additional question: In your inspection of these

books over the last year's period, have you noticed the trend of the business——

A. I only work on those books once a year and naturally, before the great increase in war activities, the hotel receipts were considerably less than they are now.

Q. But you have never made any inspection of the books to see whether the downward trend is an actual trend in the Enetai Inn in the spring?

[fol. 116] A. No, sir, I haven't.

Q. In your inspection of the books, have you observed whether or not the opening and closing of the schools has affected the business?

A. I hadn't analyzed any of those factors, Mr. Gill, because, up until now, there has been no occasion to do it.

Q. Do you know what type of tenant occupies the Enetai Inn?

A. What do you mean?

Q. I am interested whether it houses white collar workers, navy yard workers, transients or what?

A. Well, from our observation, they are navy officers, chief petty officers, men travelling on business, and possibly some of the artisans at the yard. That is all I have observed.

Q. And the number of those persons you have described, depend greatly upon the amount of the work being done at the yard,—whether it is full employment or not full employment?

A. My sojourns about the place have been for a few hours, morning, and when leaving at night, and my observations are very scanty and would be inaccurate.

Mr. Gill: That is all.

(Witness excused)

Mr. Turner: Now, if the court please, subsequent to the supplying of these daily rooms reports, the plaintiff is able to rest. I have been giving some thought to the period we should cover by these daily rooms reports and I thought maybe it would be a right time to indicate the period we should cover. We can take them from February 4th, the date referred to by Mr. Stickney in his testimony as being a full house. You can see by just a casual glance of that [fol. 117] that all the rooms are filled up. Well, I think that it would also be enlightening if we would take one of

the very large houses in 1945. I am quite confident, without having it before me, that there were many multiple occupancies in 1945 and many occasions when people quadrupled in double rooms, and that would tend to explain to some extent why the net profits are lower this year than they were last. The question is where to stop in the study of these financial records. We want to produce all that the court would find of any use in trying to figure the amount of damage, but it is a laborious job taking it off all these copies, and I would suggest that we just offer the two fifty-three-day periods, which are covered by Mr. Stickney's statements.

The Court: I think these are sufficient, but the court can make a fairly good guess at the situation.

Mr. Turner: That is roughly from May 1st up to August 31st. I just don't know the date of ending. I think we should supply those. (Handing daily rooms reports to clerk)

All right, plaintiff rests.

ARGUMENT ON MOTION TO DISMISS

Mr. Gill: If it please the Court, I move to dismiss on the grounds that the testimony has not shown that the plaintiff has any cause of action, under that opinion which I read to the court. But there were some allegations in the complaint to the effect that the defendants were engaged in a conspiracy among themselves and with other unknown persons, to run plaintiff out of business. There has been no testimony on that. The only testimony is to the effect that the defendants placed plaintiff's establishment on the "We do not patronize" list, placed a picket in front of the Enetai Inn, carrying a banner, and publicized the unfairness of the firm by newspaper and by word of mouth, which I have already admitted, etc.

[fol. 118] The Court: The only question the attorney makes is: You have no right to picket because the proprietor refused to sign a closed shop contract. That is my understanding of that. I will hear from Mr. Turner on this. It used to be that the court held that an employer had to have a member of the union in his employ before there was a labor dispute. That is what the Supreme Court held in the Safeway case, but that's been changed. The

United States Supreme Court, first, and then the Supreme Court of this state ruled directly on this point. I feel I must follow the United States Supreme Court. They held that under the constitutional provision providing for free speech, labor unions had a right to advertise to the public that this fellow was not fair to them because of many things—by violation of their rules—didn't pay proper wages and didn't grant proper leaves of absence—or the conditions were not satisfactory. And I think the cases have held—I can't put my finger on them—but they have held the unions have a right to say employers are unfair if they refuse to sign a closed shop contract, If that is the law, it is not up to this court to revise it. I am not a Supreme Court. I can't substitute my judgment; (assuming that it might or might not be different) I have got to take the law as it is.

What particular thing has this union done that it didn't have the legal right to do under the decision of the Supreme Court of the United States and under the Supreme Court of this state? I'll hear from Mr. Turner.

(Argument by Mr. Turner)

The Court: I think I had better adjourn this case until tomorrow morning. It involves a question I want to give [fol. 119] more study. We'll continue with it tomorrow morning. May I ask you how long it will take you to put your case in?

Mr. Gill: Oh, a couple of hours.

The Court: We'll adjourn until 10 o'clock tomorrow morning.

Mr. Turner: I had expected to call Mr. Shannon of the City Hand Laundry to prove that the laundry refused to handle the Enetai Inn laundry during the period of this picketing. I missed connections with him this noon and he got away and I couldn't locate him. He had agreed to come here and testify. I was confronted with the problem —I didn't want to hold the case over for his testimony but as long as we are coming over anyway, I'll bring him over first thing in the morning.

The Court: That is all right.

(Court adjourned until 10:00 o'clock the following morning)

[fol. 120] (Thereafter, on October 23, 1946, the following day, at 10:00 A.M., the case continued as follows:)

Mr. Turner: If the Court please, pursuant to matters discussed last night, I got in touch with Mr. Shannon and I move to reopen my case for the purpose of getting his testimony in the record.

The Court: Proceed.

CHARLES SHANNON, called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Turner:

Q. State your name.

A. Charles Shannon.

The Court: You live in Bremerton, Mr. Shannon?

The Witness: Yes.

Q. What is your business, Mr. Shannon?

A. Laundry and dry cleaning.

Q. What laundry and dry cleaning establishments do you own?

A. I own the City Hand Laundry and French Cleaners in Bremerton, the Quality Laundry in Port Orchard, and the call office, which we call the "West Park Cleaners" in West Park.

Q. Did you, the past spring, have the laundry business of the Enetai Inn?

A. Yes.

[fol. 121] Q. Had you had that for some time?

A. We have had it for several years.

Q. Were you satisfied with the Enetai Inn as a customer?

A. Very much so.

Q. Was there anything about the Enetai Inn business that would make you unwilling to continue to handle that business?

Mr. Gill: We'll stipulate that the relations between the laundry and the Enetai Inn were satisfactory.

Q. Well, Mr. Shannon, referring to the time when the Enetai Inn was placed on the unfair list about the end of

May, 1946, and pickets appeared, will you tell what effect that had upon your service for the Enetai Inn?

A. Well, we were notified at the time the picket was put on, that our drivers could not cross the picket line.

Q. Who gave you that notice?

A. Mr. Holbrook.

Q. That is the defendant in this case?

A. Yes.

Q. Did you talk to Mr. Holbrook at that time?

A. No, I talked to him by phone.

Q. It was you who talked to Mr. Holbrook in person?

A. Word came to the office—and we had a telephone conversation——

Mr. Gill: I move to strike the witness' testimony as to what Mr. Holbrook says, as hearsay.

Q. You did speak to Mr. Holbrook in person, the following day, following up that telephone conversation?

Mr. Gill: I wish to strike the witness' testimony——

The Court: No, he said some word came to the office and he later contacted Mr. Holbrook.

Mr. Gill: What Mr. Holbrook said——

The Court: He didn't say what he said, yet.

Mr. Gill: Previously, he said it.

[fol. 122] The Court: Let's see what he contends Mr. Holbrook said to him.

Q. Now, in your own conversation with Mr. Holbrook on the picket line situation, on the telephone, what was said between you and him?

A. I asked him what was the reason — the picket line and he just told me that the Enetai Inn had been placed on the unfair list by the Building Service Trades Union and Central Labor Council, and because of our contract with the Teamster Union, we therefor- could not go into the plant that is, into the Enetai Inn. At that time, I asked them if it was a bona fide picket line and sanctioned by everyone concerned in the matter. He confirmed that it was.

Q. How many times did you talk to Mr. Holbrook on the phone during that period?

A. I believe three different times.

Q. Was there anything additional in the subsequent telephone conversation?

A. Nothing on the occasion of the second conversation except he still confirmed his first statements. On the third and last one, I asked him if they couldn't possibly get the matter straightened out, because they were suffering by the loss of business. I wanted to know when we could get in there and get their business out—it was quite a blow. He informed me he would notify me as soon as he could get it straightened up.

Q. Prior to the placing of the Enetai Inn on the unfair list, what had been the practice in rendering laundry service to the Enetai Inn?

A. What had been what?

[fol. 123] Q. I say, what system was followed in actually getting the soiled linen from the Enetai Inn and getting clean linen back into the hotel?

A. Well, we made a daily pickup in the afternoon.

Q. Who would make the pickup?

A. Our regular downtown driver.

Q. Was that driver a member of the Teamsters Union?

A. Yes.

Q. All right. And the driver would bring the soiled linen to your laundry in Bremerton?

A. Yes.

Q. Then I assume it would be washed and what operations were performed on it?

A. It was washed. What flat work was required to be ironed, was run through the flat work iron, and the towels were dry-tumbled.

Q. And when the laundry was all ready for the driver, the driver would pick it up?

A. The driver picked the bundle up and loaded it on the truck, delivered it to the Enetai Inn and picked up the soiled linen for that day.

Q. Is that done every day?

A. With the exception that two full loads were picked up on Friday.

Q. Twice on Fridays?

A. Yes.

Q. After the picket line was established, for the first few days, what practice was followed?

A. No practice whatever. They were out.

Q. You wouldn't make the deliveries?

A. No.

Q. Or make the pickups?

[fol. 124] A. No.

Q. Was any of the Enetai Inn laundry brought to your laundry?

A. Yes.

Q. What happened to it there? Was it processed?

A. It was processed, I believe, for one day—possibly two. I don't remember exactly.

The Court: And then what?

Q. Then what happened?

A. Then we were notified that the inside crew would no longer process the work.

Q. What union did the inside crew belong to?

A. That is the Laundry Workers Local 184.

Q. And members of that union were the one who did the washing and the ironing?

A. Yes.

Q. You recall the date on which the laundry workers refused to do the Enetai Inn laundry?

A. Yes, I do. It was the 15th of June.

Q. Of 1946?

A. Yes.

Q. At that time, did you have any soiled linen of the Enetai Inn in your laundry?

A. Yes, there was a load in there that had been brought in the night before.

Q. What was done with that?

A. Well, the wash man notified the superintendent of the plant that action had been taken on it at the Laundry Workers Union, the night before, and they had been notified by someone—I don't know who it was at the time, not to handle that work; no union member should touch that work. [fol. 125] He notified the superintendent of the fact, the first thing in the morning, and so I decided there was nothing to do but call Mr. Gazzam immediately, and I did, and told him the predicament, he was in, and left the work dirty.

Q. Had it returned to the Enetai Inn?

A. Yes.

Q. Were there any other laundries in the city of Bremerton vicinity who would be able to handle the Enetai Inn

laundry, subsequent to the time the laundry workers took that action?

Mr. Gill: Object to that. No foundation laid, that he discussed the matter with everyone.

The Court: Overruled.

A. There was no laundry that could handle it, other than laundries that would be controlled by this union action, also.

Q. I will ask for this phone book exhibit here, Defendant's Exhibit No. 2. Calling your attention to this first page of the exhibit, under the heading, "Laundries,"—you can see quite a few laundries listed. Take these, one at a time, and tell what it is—whether they have union help—who was the proprietor and what type of equipment they have.

A. First, is listed as the City Hand Laundry. That is my plant and has adequate equipment and is the one that has been doing the Enetai Inn laundry for several years.

Q. The next, "Help Yourself Laundry."

A. I know very little about that plant except it has, I believe, home washing machines, and home electric ironers.

The Court: Couldn't adequately handle the hotel laundry?

The Witness: Couldn't adequately handle any commercial work.

Q. I believe this is the one Mr. Gazzam tried. I will clear that up, later.

[fol. 126] A. The next is the Puget Sound Laundry. That has adequate equipment. Mrs. Saterbois runs that.

The Court: That is a union shop?

The Witness: That is a union shop, and her employees are instructed as well as mine.

Mr. Gill: How do you know that?

The Witness: I have that from the general information I received from Mrs. Cameron, the business agent of the union.

Q. Mrs. Cameron told you that?

A. She said all of the employees of the union were instructed they could not handle the Enetai Inn work. That also includes the employees of my plant in Port Orchard. That is the Quality Laundry. The next one of the list is the

Quality Laundry in Port Orchard, which is my establishment. The Shannon Service Store is a messenger service. It has all my plants listed under it for advertising purposes, only. It encompasses all of them.

Q. Included in the Shannon Service, you say, is the French Cleaners and Dyers?

A. Yes.

Q. Does that have any laundry equipment?

A. No, that is dry cleaning equipment.

Q. And I think you have already testified that the West Park Cleaners is simply a call office—no equipment whatsoever?

A. That is right.

Q. You now refer-ed to all of the laundries?

A. That is all the laundries listed there.

Q. On that exhibit. You may cross examine.

[fol. 127] Cross-examination.

By Mr. Gill:

Q. You know about the existence of the Hood Cleaners firm and the Valley Cleaners firm?

A. Yes.

Q. Do they have equipment to do this type of work?

A. Nothing but dry cleaning equipment in either plant.

Q. Those firms are non-union firms, are they?

A. Non-union, yes.

Q. Your conversation with Mr. Holbrook, Mr. Shannon, wasn't that on the basis of explaining to you that the union teamsters wouldn't handle the Enetai laundry?

A. Yes.

Q. He didn't tell you that you couldn't get it yourself?

A. No.

Q. He didn't tell you that you couldn't hire a non-union teamster to get it?

A. No.

Q. He merely told you that the union teamsters couldn't get it?

A. Yes.

Q. You decided to get it through other means and methods and he didn't tell you you couldn't do it through other methods?

A. No.

Q. You testified you had a contract with the Teamsters Union. Under the terms of that contract, would it be possible to hire a non-union teamster to pick up the laundry of the Enetai Inn?

A. No.

[fol. 128] Q. You had to use union teamsters, entirely?

A. Yes.

Mr. Gill: That is all.

(Witness excused)

Mr. Turner: I'd like to recall Mr. Gazzam on one point unless it is already clear that the Help Yourself Laundry is the one Mr. Gazzam bought.

Mr. Gill: I think he covered it. However, Mrs. Stapleton wasn't sure about it.

The Court: (To Mr. Gazzam) You testified that that is the one you acquired in Manette and installed your equipment in it.

Mr. Gazzam: I did not install the additional machinery until the laundry, itself, had been transferred to another building—but at that time, that was the laundry I purchased.

Mr. Turner: Plaintiff rests again. At the time of adjournment, yesterday, I was discussing the Wisconsin case.

The Court: Last night, after attending the meeting I came down here and reviewed the opinions I had read before, but had forgotten. And I am afraid I find one that is absolutely binding on this court, however good or bad it might be. And I'd like to hear Mr. Turner's explanation or differentiation of this S. and W. Fine Foods case, 11 Wash. 2nd, Page 262, and this case, in which all of the Judges took a crack at the situation and all concurred in the lower court decision, except one, Judge Steinert,—but he wrote no dissenting opinion.

[fol. 129] Mr. Turner: (Argument)

ORAL OPINION

The Court: I think I must be governed by our Supreme Court and not by the Supreme Court of Wisconsin. I think I appreciate the subject. As I said before, I have read these opinions in an interested sort of way but not

for the purpose of determining the court's action in any particular case before the court. But last night, I came back here and went over the various cases and analyzed them and then read the S. and W. Fine Foods Case and went no further. I find myself, in my opinion and without any question of a doubt, bound by it. After reading and analyzing it, I find I'm completely and entirely up against a stone wall in the decision of the Supreme Court in the case of S. and W. Fine Food, Incorporated, vs. Retail Delivery Drivers and Salesmen's Union, Local No. 353, as reported in 11 Wash, 2nd, Page 262.

You remember I am here to declare the law—interpret the law—not here to make it. Sometimes, personally, I think the law should be very different, but then the Supreme Court of our state has said it is the law and it would be utterly ridiculous on the part of the trial court, as I think it would be on the part of the Supreme Court, to attempt to overrule the higher court. Several judges have attempted to overrule the Supreme Court, which is not in accordance with our system of judicial propriety. And certainly, if the law is clear and the meaning is clear, and it is, it's unanswerable; I cannot go in the face of the Supreme Court of this state and the U.S. Supreme Court, when they have said what the law is.

Now, let's analyze a little bit the facts in this case. There was an attempt between the plaintiff and defendant —an attempt to get together on a contract for two purposes: [fol. 130] One was to secure for the plaintiff's employees, better working conditions, better hours and so on—the other was to make a union place out of his hotel. There is no doubt that both subjects were discussed with Mr. Gazzam on his first meeting with these men. Mr. Gazzam so says. Then they presented a contract to him that had in it that clause that does require—no question about it—that these seven maids or the number of people involved—either join the union or be fired. That isn't the language of it but that is the legal consequence. He refused to sign the contract. They started picketing. And then a couple days after they started picketing, Mr. Turner wrote Mr. Merkel (then representing the union) a letter in which he intimated very clearly that Mr. Gazzam would be perfectly willing to negotiate on wages, hours, working conditions, etc. if they would eliminate this necessity of firing his present em-

ployees. That letter was dated June 4th. And thereafter, such meeting of the parties was deemed by the union to be undesirable without that clause in that contract. So they put the pickets back. So we may assume—I don't think it is an absolute, unqualified fact, but let's assume it is—that the sole, solitary purpose of this picketing was to force Mr. Gazzam to sign the contract under the terms of which he was only to employ union women or union men. Let's assume that and proceed to decide the case on that assumption. It is true they did qualify it somewhat by saying that he could keep his present employees but all new employees would have to join the union within fifteen days. The legal difference is nil. While he is not compelled to fire the ones he has, the freedom to hire new employees, unconnected with the union, is absolutely denied to him—destroyed.

[fol. 131] Let's see this case. The U.S. Supreme Court in the Swing case pointed out, which changes the whole complexion of the law—then, for the first time, the first amendment of the Constitution, protected by this 14th amendment, gives the right of picketing under the guise that that is freedom of speech and the only freedom of speech that labor has. In other words, that a workman, under our complex situation, hasn't the opportunity to advise the public of the type of business that he considers unfair to his interest that is being conducted by the employer, so he puts a picket on. This acts to say in effect: "This place of business is unfair." The Supreme Court of the United States has held that that is a right, guaranteed and protected under the first amendment of the Constitution under the guise of free speech.

The only limitation I can find placed upon that, anywhere in any of the courts' decisions, is two-fold—possibly three-fold. One, is that this picketing must be free from actual violence of any kind or character. There doesn't seem to be any designation made between mass picketing, which has never been declared legal, and picketing by two or three or four members—a sufficient number to protect their right of free speech and to advise the public of the unfairness of the employer. It is also limited by the fact that it is not a right to picket for an unlawful purpose.

Well, let's analyze this. Certainly it's not unlawful for a union to ask Mr. Gazzam to join its organization. Cer-

tainly it's not unlawful to ask Mr. Gazzam to make a contract with an organization, agreeing only to employ union help. No court has said those things are in, and of themselves, unlawful, even though the effect would be to force these members to join the union.

[fol. 132] In this S. and W. Fine Foods case is another intimated limitation, which might limit the right to picketing—that is where it amounts to a secondary boycott. I found no evidence of that in that case and certainly there is none in this.

In order to explain so anyone who runs may read—so that there can be no doubt in the mind of anybody what the Supreme Court had in mind, I shall read portions of the S and W Fine Foods case and the two cases that follow it. The Swing case wiped out the 1933 statute in holding that picketing, for the first time, comes under the first amendment and that the right of free speech is absolute and not limited, as we have heretofore been led to believe.

I am going to read most of this case:

"Plaintiff, S and W Fine Foods, Inc., is a California corporation, doing business in the state of Washington as a wholesale dealer in dried fruits, coffee, and canned goods. Plaintiff maintains an office and warehouse in the city of Seattle, employing in connection with that office nine salesmen, four warehousemen, a window decorator, and an office staff. The salesmen cover their territory by automobile, taking orders which are later filled from the warehouse.

"The warehousemen are members of Warehousemen's Local Union No. 117, that union having no dispute with the plaintiff. None of the plaintiff's salesmen was a member of Retail Delivery Drivers and Salesmen's Union, Local No. 353 (hereinafter referred to as the union), which desired to unionize"

—not a word about labor or hours—just tried to unionize it.

"unionize plaintiff's establishment. The union sought a contract with plaintiff, whereby plaintiff would agree to hire only union men. Plaintiff refused to sign such a contract, and its nine salesmen unanimously refused to join the union.

"Thereafter, during the month of April, 1940, plain-

tiff's warehouse was picketed by the union, the pickets carrying signs stating the plaintiff was unfair to organized labor. The picketing was at all times peaceful, the record disclosing no evidence whatsoever of violence or threats of violence."

[fol. 133] Certainly there are none here.

"Upon the establishment of the picket line, plaintiff's union warehousemen ceased work, and union truck drivers refused to haul plaintiff's merchandise, the result of the picketing being that plaintiff's business was, to a great extent, stopped."——

Put out of business because they couldn't get the truck drivers to drive groceries in and out, because the truck drivers belong to a union, the same as this situation where the teamsters that haul the laundry, belong to the union, and they refuse to haul the hotel's laundry.

"May 1, 1940, representatives of the union met with plaintiff's salesmen, and under the direction of Federal officials, plaintiff's salesmen voted by secret ballot upon the matter of joining the union, the salesmen again unanimously voting in the negative. From the evidence it appears that the union, by phone calls and letters, informed certain of plaintiff's customers that the union had declared plaintiff unfair, and requested"——

—all very close to *boycot*——

"and requested that plaintiff's customers cooperate in inducing plaintiff to unionize its establishment."——

—do nothing about wages——

"May 23, 1940, plaintiff filed its complaint in this action, naming as defendants the union above referred to, together with several other labor unions, the Central Labor Council of Seattle, and many individuals, members of one or other of defendant unions."

Throughout the suit, these nine salesmen uniformly continued to have nothing to do with the union. They asked permission to intervene and they did intervene on the side of the employer, so there was the employer, employees, not members of the union, refusing to join the union—all parties to the action against the union that was doing the picketing. The action came on regularly before the court; a temporary restraining order was granted and appeal was taken.

[fol. 134] "Appellants assign error upon the holding of the trial court that the evidence did not show the existence of a labor dispute between respondent and appellant union. Error is also assigned upon the decree of the court permanently enjoining picketing of respondent's place of business, and that portion of the decree enjoining any boycott against respondent's business and restraining appellants from publishing, either by picketing or otherwise, any declarations that respondent had been declared unfair to union labor. Appellants also assign error upon the refusal of the trial court to hold that appellants' right to picket respondent's place of business is protected by the constitution of the United States.

"The interveners above referred to have not appeared before this court."

(That is, the Supreme Court)

"The trial court, in holding that no labor dispute existed between respondent and appellants, followed the opinions of this court in the cases of Safeway Stores vs. Retail Clerks' Union"——

—and others that followed that line, which held that there had to be an employee who was a member of the particular union, sought to be enjoined, before there was a labor dispute.

"In the case at bar, none of respondent's salesmen was a member of appellant union. It appears from the evidence that some of the salesmen were at the time of the trial of the action, or had previously been, members of other unions, and appellants argue that for this reason a labor dispute was presented. The fact that some of the salesmen had been or were members of other unions, no one of such unions being engaged in any controversy with respondent, did not cause the facts before the court to present a labor dispute, within our decisions above cited."

Now, Judge Beals writes further:

"In the case of Thornhill vs. Alabama, 310 U.S., 88, the Supreme Court of the United States held that a state statute prohibiting picketing was contrary to the constitutional right of freedom of speech guaranteed by the first and fourteenth amendments to the Federal

constitution. In the case of Carlson vs. California, 310, U.S., 106, the Supreme Court held void a municipal [fol. 135] "ordinance prohibiting picketing as also violative of the fourteenth amendment. In the case of Milk Wagon Drivers Union vs. Meadowmoor Dairies, 312 U.S. 287, it was held that a state court could enjoin picketing when it appeared that the picketing was enmeshed with, and set in a background of, violence against the employer.

"The decisions of the supreme court of the United States above referred to embody the principle that the right to peacefully picket is protected under the fourteenth amendment to the Federal constitution, in cases where the picketing is no part of any concerted plan or campaign involving violence.

"In the case at bar, the principal question presented is whether the right to peacefully picket the plant of an employer is protected by the first and fourteenth amendments to the Federal constitution, where there is no employer-employee relationship existing between the employer picketed and the members of the unions involved in the controversy.

"The supreme court of the United States, in the case of American Federation of Labor v. Swing, 312 U.S. 321, held that the union was within its rights in picketing Swing's beauty shop, although none of the employees of the establishment was a member of the picketing union. The court directly held that the constitutional guaranty of freedom of discussion protected the right of the union to peacefully picket, even though no union member stood in an employer-employee relationship with the employer.

"The case last cited is controlling here. It is true that in the case at bar the picketing of respondent's establishment resulted in the refusal of respondent's warehousemen to cross the picket line, and in the refusal of union teamsters to haul respondent's merchandise. These factors were not present in the Swing case, but the fact that they exist here does not render the decision of the supreme court of the United States any less applicable to the situation here presented.

"The record does not indicate that any of the acts of appellants suggested the employment of violence

against respondent, its employees, or any of its customers."

[fol. 136] And then there are some things that I might omit.

"The record indicates that the picketing of respondent's establishment was peaceable, and was accompanied by no actual or threatened violence.

"In this connection, the case of Wohl vs. Bakery & Pastry Drivers etc., 259 App. Div. 868, 19 N.Y.S. (2d) 811, should be considered. The supreme court, appellate division, awarded an injunction at the suit of several peddlers of bakery products, enjoining the defendant union from picketing. The court of appeals, without opinion, affirmed the judgment. Wohl vs. Bakery & Pastry Drivers etc., 284 N.Y. 788, 31 N.E. (2d) 765. On certiorari to the supreme court of the United States, the judgment of the state court was reversed upon * * *

authority of the Swing case. And as I remember it, that was the case where the owner was a lone dealer and had no employees at all. Judge Beals continues:

"The supreme court of the United States has clearly laid down the rule governing such picketing as was maintained by appellants, and under the cases cited, with particular reference to the Swing case, we are constrained to hold that the trial court erred in permanently enjoining appellants from continuing the picketing in a peaceable and orderly manner.

"The decree appealed from is reversed."

Judges Main, Blake, Simpson, and Driver, concurred. Judge Steinert, alone, dissented. Judge Millard and Judge Robinson concurred and Judge Robinson's concurring opinion is beautiful. He says:

"As a practical matter, the ultimate effect of the foregoing opinion will be that the nine salesmen involved in this action will be compelled to join the picketing union or lose their jobs. Their employer may be able, for a little while, to maintain its hitherto correct attitude of neutrality, but sooner or later, as a matter of self-preservation, it will have to abandon it; for, although it be able to weather the concentrated drive made upon its customers, it will not be able to secure

special services made necessary by breakdowns or required from time to time to make necessary repairs, alterations, and physical improvements, so long as even one picket exercises his right of freedom of speech in front of its premises.

[fol. 137] "A picket line is a sacrosanct, a barrier which may not be crossed without risking severe pains and penalties. It is not what the picket says, but his locus in quo which proximately causes the desired result. This being so, were it not for the all-inclusive interpretation placed upon the words "freedom of speech" by the supreme court of the United States in the Swing case, one might well justify a dissent from the majority opinion upon the ground that impelled the late Mr. Justice Brandeis to dissent in the case of Di Santo vs. Penn. 273 U.S. 34, 43, 71 L. Ed. 524, 529, 47 Supreme Court 267, in which he said, Mr. Justice Holmes concurring:

> 'In the case at bar . . . the logic of words should yield to the logic of realities.'

"I concurred in the result of the recent opinion of this court in O'Neil vs. Building Service Employees International Union, Local No. 6, 9 Wn. (2d) 507, 115 P. (2d) 662, in the belief that the opinion of the supreme court of the United States in the Swing case required that result.

"It was vigorously contended, at the hearing of the instant case, that it did not. That it did is now clear beyond all question. In support of that statement, I cite the action of the supreme court of the United States in the case of Bakery & Pastry Drivers etc. vs. Wohl, 313 U.S. 548, 85 L. Ed. 855 . . . a case so recently and so inconspicuously decided that it was not called to our attention until a month after our decision in the O'Neil case had been rendered."

And that was the case where the man was selling bakery goods and he had no employees and the Supreme Court held the union had a right to picket.

> "This decision goes much farther than we are required to go in order to reverse the judgment in the instant case. In that case, the picketing union exercised its right of freedom of speech for the express

purpose of interfering with the personal undertakings of Wohl and Platzman, neither of whom had any employees whatever. In the instant case, since the S and W Fine Foods, Inc., are employers of labor, the picketing union has at least a semblance of legitimate interest. In that case, the union picketed, not only the respective plaintiffs' sources of supply, but threatened to picket their customers as well. In this case, the union merely picketed the employer's plant. Furthermore, in that case, the consequences to the plaintiffs of their refusal to afford injunctive protection will be exceedingly drastic. It appears that each of the two plaintiffs in that case was scarcely able to support his family. Platzman, working sixty-five hours per week, was able to make but thirty-five dollars per week. De- [fol. 138] nied protection, he will be compelled to employ union help. Violent changes will have to be made in his modest business venture, assuming that he can continue to carry it on at all. In this case, the nine salesmen can continue to work as usual—if they will but pay an initiation fee to the picketing union, and a monthly royalty for the privilege, and submit themselves in various ways to its government and control.

"This court is bound to take note of the fact that the supreme court of the United States has recently so profoundly altered the rules of law governing the matter before us as to destroy the force and authority of many of its previous decisions."

And it goes on and on and on. And then he says:

"I feel compelled to concur in the result reached by the majority. But beyond that I cannot go."

Then he points out that freedom of speech is not the only fundamental right, but that there is a fundamental right of a person to work and he insists that the fundamental right to work is higher and more vital and more necessary than the right of free speech and he says some people have been willing to die to say what they think but those people are few, but everyone has to work in order to live. And he goes on in very beautiful language—better than I can say. And if you are interested I suggest the reading of that concurring opinion of Judge Robinson.

Now, there has been two cases since that—one in the same volume, 11 Wash. 2d at Page 503, where all the judges take a crack at the same situation. And when Judge Robinson writes his concurring opinion, he says:

> "I concur in the result of Judge Blake's opinion for the same reason that I concurred in the result of the majority opinion in O'Neil vs. Building Service Employees Union, 9 Wn. (2d) 507, 115 P. (2d) 662 and [fol. 139] of the majority opinion in S and W Fine Foods, Inc. vs. Retail Delivery Drivers and Salesmen's Union . . . In cases of this character, we are duty bound to follow the decisions of the supreme court of the United States."

And the same thing, Judge Millard writes in his opinion.

In the latest case, State ex rel. Lumber and Sawmill Workers vs. Superior Court, 124 Wash. Decisions, Page 295, in which all of the decisions are reviewed and in which it is said there:

> "In S and W Fine Foods vs. Retail Delivery, etc. Union, 11 Wash. 2d . . . we followed American Federation of Labor vs. Swing . . . and overruled Safeway Stores vs. Retail Clerks' Union, 184 Wash. 322 . . ."

and other cases,

> "We held that the right of a labor union peacefully to picket the plant of an employer is protected by the first and fourteenth amendments to the Federal constitution guaranteeing the right of free speech, even if there is no employer-employee relationship existing between the employer and the members of the union. We held that injunction would not lie to restrain members of a salesmen's union from picketing the warehouse of a wholesale dealer in an endeavor to compel the dealer's salesmen to join the union, even though such picketing resulted in the refusal of the dealer's warehousemen to cross the picket line and in the refusal of the union teamsters to haul its merchandise, where it appeared that the picketing was peaceable and that it was not associated with a secondary boycott."

Now, in this case, the Supreme Court followed the S. and W. Fine Foods decision and they have pointed out definitely and positively what the law is. The Supreme Court

of the United States has definitely and clearly determined that the right of picketing exists. The only limitation being that violence must not be connected with it. The Supreme Court of our state has placed another limitation upon that right, which I approve of, that it shall not be for [fol. 140] an unlawful purpose and they have indicated if it amounts to a secondary boycott it is unlawful. I don't understand what it takes to constitute a secondary boycott.

So the question in this case is one of political wisdom on the part of the defendant union. Under the law as it is written by the Supreme Court of our state and the Supreme Court of these United States, which I am required to follow—am duty-bound to follow—I have no justification to ignore the law as laid down by those two *bodis*—I must grant the motion for dismissal.

Mr. Turner: (Argument) Will the court entertain a written brief? (Asking the court to withhold his decision.)

The Court: I would be glad to.

Mr. Turner: Just for my own guidance, is that motion open for reconsideration? Is the court withholding the order of dismissal?

The Court: Let the record show I am taking the case under advisement. How long do you want?

Mr. Turner: I think I could get one in in ten days or two weeks.

The Court: If Mr. Turner convinces me I am wrong, I will give Mr. Gill an opportunity to answer.

Mr. Turner: Suppose the court should be of the view after considering written briefs, in plaintiff's favor, then would we continue the trial?

The Court: Yes, continue the trial, let them put on their testimony and decide it, yes.

(Case taken under advisement; court adjourned.)

[fol. 141] (Subsequently thereafter, on the 13th day of November, 1946, Judge H. G. Sutton issued the following memorandum opinion:)

MEMORANDUM OPINION

The Court: I have gone over plaintiff's brief with great care but I must confess that I can find nothing new in it

whatever. The whole argument is based upon the assumption that this picketing was and is unlawful. I am ready to concede that if it were unlawful, then a court of equity would intervene and enjoin it and would enter a judgment for any damage established by the evidence.

Counsel contends that there is a difference between a set of facts which would warrant a court in entering a judgment for damages and one that would justify an injunction. I am ready to concede that this is true as an abstract proposition of law in many circumstances but it does not apply in this case. Either the picketing was lawful or it was unlawful. If it was lawful, the labor group had a right to use it. If it was unlawful, then they did not. The Supreme Court of the United States and the Supreme Court of the State of Washington have so definitely and positively stated that it was lawful, as pointed out in my oral opinion, that it is useless for me to argue the matter further.

Judge Robinson and other members of the court state that the effect of their opinions was that the employees involved in the various cases would be compelled to "join the picketing union or lose their jobs." In other words, it amounts to a coercion of the employer that he either require his employees to join the union or discharge them. This was squarely before the United States Supreme Court and squarely before the Supreme Court of the State of [fol. 142] Washington. They have decided. I cannot overrule their decisions. So that I must adhere to my former opinion that this picketing was, under these decisions, lawful. Therefore, the court cannot enjoin it nor can the court enter judgment for any damages that grow out of lawful acts committed in a lawful way.

The challenge to the sufficiency of the evidence will therefor be sustained and I have today signed and entered the judgment of dismissal as presented by the defendants' counsel.

[fol. 143] CERTIFICATE TO STATEMENT OF FACTS

STATE OF WASHINGTON,
County of Kitsap:

I, H. G. SUTTON, one of the judges of the Superior Court of the State of Washington in and for the County of Kitsap and the judge before whom the foregoing cause was

tried, do hereby certify that the matters and proceedings contained in the foregoing statement of facts are all of the matters and proceedings occurring in said cause.

I do further certify that the foregoing statement of facts contains all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions; and that Plaintiff's Exhibits "A" to "G," inclusive, and Defendants' Exhibits No. 1 to No. 3, inclusive, hereto attached are all of the exhibits offered upon the trial of said cause.

Counsel for plaintiff and counsel for the defendants concurring in this certification.

Done in open court, this 18 day of February, 1947.

H. G. Sutton, Judge.

[fol: 1]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

No. 22247

W. L. GAZZAM, Plaintiff,

vs.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLES MEYER AND E. W. HOLBROOK, Defendants

STATEMENT OF FACTS

BE IT REMEMBERED, that the above-entitled cause came on for trial before the Hon. H. G. Sutton, one of the judges of the above-entitled court, on October 22nd, 1946, proceeding in Superior Court Dept. I, Court House, Port Orchard, Kitsap County, Washington; thereafter, the matter was appealed to the State Supreme Court, the Supreme Court thereafter filing its opinion in the case on December 22nd, 1947, reversing the judgment of the lower court and remanding the case with instructions to proceed in accordance with the views expressed by the Supreme Court, en banc.

That thereafter, in pursuance to said Supreme Court opinion, the matter came on for further hearing before the Hon. H. G. Sutton on the 27th day of May, 1948, pro-

ceeding in Superior Court Dept. I, Court House, Port Orchard, Kitsap County, Washington, beginning at 10:00 A.M.; that Theodore S. Turner, Esq., appeared as attorney for Plaintiff; that L. Presley Gill, Esq., appeared as attorney for all defendants; that Curtis Coons, Esq., appeared as attorney for defendant, William Morganson;

[fol. 2-58] WHEREUPON, the following proceedings were had and testimony given, to-wit:

Mr. Gill: If it please the Court, there has been additional pleadings filed in this case. I would like to direct your attention to the additional pleadings.

The Court: That is, the supplemental complaint.

Mr. Gill: May it be agreed between the parties in this proceeding that the Statement of Facts, results of the trial of this case, before, when it went up to the State Supreme Court,—may it be stipulated that it may be received in evidence and the same facts considered as if the witnesses were here and testified, as set out,——

Mr. Turner: I would agree to that, Your Honor, but I think also it should be agreed objections made by either side and appearing in that record, made at that time, may be argued and renewed at this trial. As I understand it, the case is now here for a new trial and this is simply an expeditious way of getting the testimony in. But by so stipulating it is understood neither side is prohibited from further argument.

The Court: The proceedings, so far as evidence and objections and so forth will be the same. Whatever testimony was taken at the former trial will be considered as having been taken at this trial and will be a part of the record in this case. It is so stipulated?

Mr. Gill: Yes, Your Honor.

Mr. Turner: Saving to each side, any objections appearing in that statement of facts.

The Court: All right.

[fol. 59] E. W. HOLBROOK, one of the Defendants herein, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gill:

Q. Will you state your name?
A. Ernest W. Holbrook.

Q. What is your occupation?

A. Secretary, Bremerton Labor Council.

Q. How long have you been so active?

A. Sixteen years.

Q. Were you functioning in that capacity during the calendar year of 1946?

A. Yes, I was.

Q. Showing you what is marked for identification as, Defendants' Exhibit No. 4, I will ask you what that is?

A. Constitution and Rules of Order of the Bremerton Central Labor Council.

Q. Since 1946?

A. Since 1940, the rules have been in effect.

Mr. Gill: I offer in evidence, Defendants' Exhibit No. 4.

[fol. 60] The Court: You didn't offer Plaintiff's Exhibit "I".

Mr. Turner: No, Your Honor, I have some more testimony relative to the laundry damage. Might I ask what is the materiality of *this* offer?

Mr. Gill: To show the function of the witness.

Mr. Turner: I object to the document on the ground that it is immaterial what his employer might state his duties to be. The material thing in this case is what this party did.

The Court: I don't recall in the statement of facts, wasn't he on the stand before—I don't recall.

Mr. Gill: He is the defendant. May this be admitted? I can do not harm. This also pertains to the rules and practices with regard to listing a firm on the unfair list.

The Court: Yes.

Mr. Gill: It may go in evidence?

The Court: Yes, it is admitted.

(Whereupon, Constitution and Rules of Order of the Central Labor Council of Bremerton, was received in evidence and filed as Defendants' Exhibit No. 4.)

Q. Mr. Holbrook, calling your attention to Defendants' Exhibit No. 4, does article three on page nine describe the officers and their duties?

A. Yes, it does.

Mr. Gill: I will call Your Honor's attention just to the subjects I am interested in.

Mr. Turner: If the Court please, the document [fol. 61] speaks for itself.

Mr. Gill: I would like to call Your Honor's attention to the various sections, to save time. The section I was just referring to provides the duties of Secretary and that is the job you hold—Secretary-Treasurer?

The Witness: Yes.

Q. And it states in the document on one of the first pages that you have no vote before the executive committee, is that correct?

A. Yes.

Q. Is the executive committee sometimes referred to as the, "Executive Board"?

A. Yes.

Q. Was this the body Mr. Turner appeared before on May 3rd, at the hearing that has been testified to?

A. It was.

Q. And were you present at that meeting?

A. Yes.

Q. And did you function at that meeting as a Secretary under Exhibit No. 4?

Mr. Turner: If the Court please, I object to that as calling for a conclusion and that it is not the best evidence. I think the best evidence is what he did—not for the witness to state what his function is.

The Court: Did you vote?

Q. Did you vote at that meeting or any meeting?

A. No.

Q. Later on in Defendants' Exhibit No. 4, it describes your duties. Would you tell the Court what your duties [fol. 62] are as secretary?

A. To keep a record of the minutes.

The Court: That is all covered in here—it must be. (Referring to Defendants' Exhibit No. 4)

Mr. Gill: I am doing this to save time.

The Court: It is the usual duties of the secretary of any organization?

The Witness: Yes.

The Court: I think we understand that.

Q. Your duties appear here on page eleven, that the secretary and treasurer is to keep a correct record of the minutes?

A. That is correct.

Q. Other than keeping the minutes of the executive committee and the minutes of the council, do you have any other duties? And I am not interested in your financial duties. I mean, any other duties other than keeping minutes and taking care of the finances?

A. And correspondence.

Q. You keep track of correspondence. Do you have anything to do with placing the firm on the unfair list—referring to the Enetai Inn which was placed on the unfair list on May the 7th, 1946, as testified to? Did you have anything to do with that?

A. Nothing only keep the records.

Q. Did you vote on the subject?

A. No.

Q. Calling your attention to page seventeen, which sets forth the procedure of the Central Labor Council with respect to placing a firm on the unfair list. Will you tell what procedure was followed in connection with the [fol. 63] Enetai Inn?

A. The first request came from the Building Service in regard to placing the Enetai Inn on the unfair list. We notified Mr. Gazzam by registered letter and received a return for the registered letter, requesting him to appear and to have a representative appear before the Executive Board in order that we might avoid taking this action, and see if we could straighten the matter up,——

Q. I want to interrupt right here. Calling your attention to Defendants' Exhibit No. 5, purporting to be the minutes of the Bremerton Central Labor Council, I ask you if this document is the official minutes of the Council and of the Executive Committee?

A. Yes.

Mr. Gill: I offer it in evidence, Defendants' Exhibit No. 5.

Mr. Turner: If the Court please, I have no objection to that portion of this document being introduced in this matter, but there are nearly two full pages of extraneous matter on this document. I think it would be better to have this deleted. (Indicating)

The Court: You mean this part marked in red—the second portion? May I suggest, rather, you read it right into the record as being the minutes pertaining to this matter on this date.

Mr. Gill: I read from the document, which the witness has identified as being the official minutes of the Bremerton Central Labor Council of May 13, 1946, and particularly that portion thereof relating to the Enetai Inn, which [fol. 64] appears under the caption of, "Committee Reports," being the committee's report to the Central Labor Council.

> "Executive Board: On request of Building Service Employees to place the Enetai Inn on the unfair list, recommend that if the matter is not satisfactorily settled by May 20th that the request *by* concurred in. Report of Executive Committee adopted."

Does that last statement: "Report of Executive Committee adopted," indicate the action taken on May the 13th relative to the report of the Executive Board?

A. That is right.

Q. Now, up until that time, what had been done? You previously stated that there was a question came in and an investigation ensued. Now, what did the board do in respect to an investigation?

A. Called the representative from the Enetai Inn and the representative from the Building Service Employees in, to a meeting of the Executive Board and heard both sides of the matter, trying to determine if there was some neutral ground where we could settle the difference.

Q. Do you know what date the meeting was held on?

A. I believe it was May 7th.

Q. Calling your attention to Plaintiff's Exhibit "A", I will ask you if that is the letter you sent Mr. Gazzam, the Plaintiff, asking him to appear before the Central Labor Committee meeting on May 7th?

A. Yes.

Q. Is this your handwritten signature on it?

A. Yes.

Q. Now, Mr. Turner appeared for Mr. Gazzam at the meeting.

A. That is right.

[fol. 65] Q. And briefly, what took place at the meeting?

A. We attempted to discuss wages and hours and Mr. Turner did not want to discuss wages and hours and we paid particular attention to the agreement calling for a union shop but he did not want to discuss the union shop.

The Court: Need we go into all this, again?

Mr. Gill: You understand that we haven't had a single witness on that?

The Court: There is no dispute on that. I think Mr. Myers was called.

Mr. Gill: Mr. Morganson was called.

The Court: Wasn't Mr. Myers called too? I thought we agreed to what the facts were, generally.

Mr. Gill: No, we didn't on the brief to the Supreme Court. I don't know. I don't agree with what the Supreme Court's recital of the facts were.

Q. Mr. Holbrook, what decision, if anything, did you have any part in, with respect to wages, hours, and working conditions in respect to Mr. Gazzam,——

A. Very little bit. Mr. Turner didn't want to discuss wages and hours, if I remember correctly, and the whole matter, so far as he was concerned, was a matter of the union agreement—whether or not the union agreement was good,——

Q. Was Mr. Morganson and Myers present at the meeting?

A. I couldn't say both was present. I know one was there.

Q. Do you know about Mr. Morganson?

A. Yes, he was there.

Q. What did Mr. Morganson say with respect to wages and hours and working conditions and with respect to [fol. 66] what the union wanted?

A. The wages were very low. In fact, the figures were average of about 55c an hour and the union wage, at that time, were receiving 85c an hour.

Q. And was there a mention about over-time and vacation and sick leave at this meeting?

A. That, I don't remember.

Q. Did Mr. Turner agree on behalf of Mr. Gazzam, if you observed, to the wage scale of approximately 75c an hour?

A. No.

Q. Calling your attention to what is marked for identification as Defendants' Exhibit No. 6, I will ask you to state what this is?

A. That is the copy of the minutes of the Central Labor Council, dated May 27th.

Mr. Gill: Will Counsel agree that I may read into the record that portion of the document—that portion of Exhibit No. 6 for identification, which is the true minutes of May 27, 1946—portion relating to the Enetai Inn, under the caption of, "Committee Reports"?

Mr. Turner: That is all right.

Mr. Gill: "Executive Committee: Enetai Inn placed on the unfair list; recommended that the Council pay for the insurance on Secretary's car. Report adopted."

Q. Does that indicate what action was taken by the Central Labor Council with respect to that portion of the report to the Enetai Inn?

A. The action was that they were placed on the unfair list [fol. 67] of the Central Labor Council.

Q. Now, the testimony has shown that thereafter, on the date approximately of May 31st, 1946, pickets were placed in proximity of the Enetai Inn. Did you ever have *any thing* to do with the pickets being placed there?

A. No.

Q. Did you ever pay for any being put there?

A. No.

The Court: Did the Bremerton Central Labor Council have *any thing* to do with the pickets being placed there?

The Witness: No.

Q. Did you have any control over the picketing?

A. None, whatsoever.

Q. Calling your attention to Plaintiff's Exhibit "C", being a list of dates of the picketing and the individuals who picketed, did you have anything to do with the placing of those persons there to picket on the days indicated or on any other days of picketing?

A. No.

Q. There has been some testimony that teamsters who are connected with picking up and delivering laundry, refused to go through the picket line. Did you have anything to do with the action of the teamsters?

A. No authority in that matter.

Q. The testimony hasn't shown and I will therefore ask you what the fact is with regard to whether or not the teamsters did later make delivery of laundry and pick-up laundry at the Enetai Inn?

A. They did, after the picket line was taken off.

[fol. 68] Q. Did you have anything to do with the teamsters reversing their policy? There was testimony that the laundry workers employed at the City Hand Laundry did, approximately in the middle of June, 1946, refuse to process the laundry of the Enetai Inn. Did you have anything to do with that action?

A. No.

Q. Did you appear before the laundry workers' union in connection with the unfair listing of the Enetai Inn?

A. No.

Q. I will ask you if, as a matter of fact, the laundry workers later decided to make deliveries?

A. I understood they did, yes.

Q. Do you know of any other trades who, during some period of time, refused to permit their members to do work there? Yes or no?

A. Yes.

Q. Did you have anything to do with that action or refusal?

Mr. Turner: What is the materiality of this questioning?

Mr. Gill: To show the Central Labor Council,——

The Court: You want to get Mr. Holbrook personally out?

Mr. Gill: Yes.

Q. You just answered the question of whose members refused to work. I'll ask you whether or not these same crafts reversed their previous stand and later permitted members who refused to work at the Enetai Inn to go back to work?

Mr. Turner: I object to that.

[fol. 69] The Court: Objection sustained.

Mr. Gill: The purpose of that is to establish whether they stopped working there or whether they later did go back to work,——

The Court: He already said he had nothing to do with all that.

Q. Did you answer the question?

A. These same crafts decided to work later.

The Court: Certainly, I couldn't hold him for damages if he induced some of these men to go back to work.

Mr. Gill: I am trying to show he had no control over the men.

The Court: He said that. He said that.

Mr. Gill: Very well. I wish, for the convenience of the Court, to read a couple of paragraphs in this document. It is a lengthy document but if you will refer to page 17, section 3, you will find the following:

> "The Council shall maintain an unfair list, and before any employer, firm or corporation is declared unfair, the following rules must be followed:
>
> "Whenever any Union desires the endorsement of this Council, in a strike or boycott, after the same has been endorsed by the Union, the request must be presented in writing, with the seal of the Union attached, and shall be referred to the Executive Committee, who shall investigate the same, and report its findings and recommendations to the Council, which body shall then determine if the request shall be concurred in or not.
>
> "No Central Labor Union, or other central body of delegates, shall have authority or power to originate [fol. 70] a boycott, nor shall such bodies endorse and order the placing of the name of any person, firm or corporation on an unfair list until the Local Union desiring the same has, before declaring the boycott, submitted the matter in dispute to the Central Body for investigation, and the best endeavors on its part made to effect and amicable settlement. Violation of this section shall forfeit charter of Central Body."

Q. Do those rules follow along with every particular with respect to the placing of the Enetai firm on its unfair list and the publicizing of that,——

Mr. Turner: That calls for a conclusion.

The Court: He has answered it.

Mr. Gill: Just to save time.

Q. These minutes we have read from, are they described among the affiliated unions of the Central Body?

A. Yes, a copy is sent to each.

Q. Are these unions required to observe the unfair listing of any firm, whose name appears in such minutes?

A. They are supposed to but it is optional to them—entirely optional. They have the right but it is optional.

Q. In the event an affiliated local union desires not to participate in any unfair listing of the Central Labor Council, has the Council any disciplinary control over any union in that regard? Does the Central Labor Council have any disciplinary control over that organization—over any affiliated union—with respect to unfair listing of the Enetai Inn?

A. No.

Q. Have you taken any action in regard to that?

Mr. Turner: It seems this whole line is entirely immaterial.

[fol. 71] The Court: You are seeking to eliminate Mr. Holbrook from any responsibility?

Mr. Gill: Yes.

Mr. Turner: But I don't think his proving that the Central Labor Council has nothing to do with disciplining the local union, tends to indicate Mr. Holbrook is free from liability.

The Court: So far it may stand.

Q. Now, have you any connection with the unfair listing of the Enetai Inn, other than as Secretary of the Central Labor Council?

A. No.

Q. Have you any relationship with the Central Labor Council other than as Secretary of that body?

A. None, whatever.

Mr. Gill: You may examine.

(Court recess)

Cross examination.

By Mr. Turner:

Q. Mr. Holbrook, I will show you Defendants' Exhibit No. 3, a letter, and ask you if this Exhibit is the complaint which started the proceeding by which the Enetai Inn was ultimately placed on the unfair list?

A. (Looking at document) That is the one, yes.

Q. That Exhibit came to your attention when it was received by the Central Labor Council?

[fol. 72] A. That is right.

Q. Are you the one that opened the letter?

A. That is right.

Q. And you had custody of it at all times until it was produced at the first trial of this case?

A. Yes.

Q. Then, you were present at the meeting of May 7, 1946—that was the hearing before the Central Labor Council?

A. Yes.

Q. And I was present there, representing Mr. Gazzam?

A. Yes.

Q. At the commencement of that meeting, did you read Exhibit No. 3?

A. I believe I did. It is customary to do that.

Q. And at that meeting, you were present throughout, were you?

A. Yes.

Q. Do you recall that I stated the position of the employer with regard to the contract which the Building Service Union, the defendant in this case, wanted the employer to sign, and stated that the employer did not wish to coerce his employees, and I called attention to the State Labor Law, which said that the employee should be free from coercion of his employers? You remember I called attention to that?

A. That was two years ago. I believe I do remember you saying that.

Q. That is the position I took at that time?

A. Yes.

Q. You heard that. Then, were you present at the meet-
[fol. 73] ing of May 10th, at the Enetai Inn, when the representatives of the Union and of the Central Labor Council addressed the employees?

Mr. Gill: Just a minute, this is not proper cross examination. I didn't go into that subject, whatsoever.

The Court: I don't think any of this is very material.

Mr. Gill: There is no dispute about the circumstances. We took up a lot of time. That is the meeting that took a vote.

The Court: I see. I don't think any of it is material, to tell the truth.

Mr. Gill: I didn't offer anything of that sort on direct examination with this witness.

Mr. Turner: Counsel, I can't agree with that. I think it may prove material. Maybe you are not going to claim

LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U. S.
FILED
NOV 8 1949
CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 449

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK,

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON AND BRIEF IN SUPPORT OF PETITION.

DANIEL D. CARMELL,
130 North Wells Street, Chicago, Illinois,
WALTER F. DODD,
30 North La Salle Street, Chicago, Illinois,
Attorneys for Petitioners.

FRED HERZOG,
130 North Wells Street, Chicago, Illinois.
Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO 305

what I think you are going to claim from the testimony introduced on direct, but this relates to the testimony on direct, that this witness had nothing to do with the activities of the Building Service Union and getting us placed on the unfair list.

The Court: Let's assume he did have something to do with getting you placed on the unfair list. The Supreme Court says definitely that is permissible.

Mr. Turner: There is a point there I want to bring up. I might as well do it now, Your Honor, please. This is purely a matter of argument.

(Mr. Turner argues to the Court.)

The Court: I agree with that, but four judges [fol. 74] signed that opinion. Judge Schwellenbach says he agrees with it but not that they were doing anything wrong to place them on the unfair list. He says, "I do not believe that a union can be enjoined from merely placing a firm on the unfair list."

(Further argument by Mr. Turner.)

The Court: They sent this back and told the Court what to do. Here is what they say, exactly, and I can't misinterpret the language, I don't:

> "We hold that the acts of respondents, insofar as the picketing was concerned, were coercive . . .
> (Unlawful)
> "... appealant was entitled to recover any damages he may have suffered as a result of the picketing."

(Not as a result of anything else.) Now, if their man had nothing to do with picketing, even though they may not have meant what they said, they certainly meant that merely placing the firm on the unfair list would not constitute an act for which they could be enjoined, because it was not unlawful and they couldn't be enjoined—and there could be no damage from it.

(Further argument by Mr. Turner.)

Mr. Turner: I will continue with the examination, then.

Q. Now, you were present at that meeting with the employees on May 15th?

A. That is right.

Q. And you addressed a letter to the employees urging them to join the union?

[fol. 75] A. That is right.

Q. I show you Exhibit "E," Mr. Holbrook, and may I direct your attention to the fact that the evidence shows this is only a copy. I don't pretend to say you have ever seen this copy but the evidence is that the original of that letter was on my law office stationery. It was on my letterhead and the original was signed by me. Now, I want to ask you if the original of that letter came to your attention on or about June 4th or 5th,——

Mr. Gill: Just a minute. I object to it—not proper cross examination. I didn't go into this subject at all.

The Court: He may answer. That is the quickest way we can get through this.

A. I never saw anything like this before.

Q. Were you familiar with the developments of that controversy between the Building Service Union and the Enetai Inn?

A. There were reports made to the Council.

Q. You were pretty closely conversant with the facts as they developed from day to day, weren't you, Mr. Holbrook?

A. More or less, yes.

Q. You knew, as a matter of fact, the picketing started within a day or so after the hotel was placed on the unfair list?

A. Pretty soon afterwards.

Q. Then you knew that the picketing was called off for a period of some few days to see if the parties could get together? As a matter of fact, the meeting was with the State Conciliator and the Unions' attorney, as of that time, Mr. Merkel, and myself, and Mr. Morganson, and Mr. [fol. 76] Myers, was held in your office?

A. I believe it was. That is right.

Q. And you knew about that meeting at the time it happened?

A. Yes, I did.

Q. And you knew about the understanding that was arrived at, that I would take the matter under consideration and see if we could work out some basis of agreement?

A. I think that is right.

Q. Then you knew, either by looking at the letter or by reports made to you at the time, that we declined to enter

into that kind of a contract that had been proposed because it would force the employees to join the union? You knew that was our position?

A. That is right.

Q. You knew we were willing to negotiate on any other basis, except forcing the employees of the union to join?

A. I wasn't acquainted with all these particulars on that —on the different reports.

Q. Didn't Mr. Merkel show the original of that letter?

A. No.

Q. Did you talk to Mr. Merkel at the time?

A. No.

Q. Did you talk to Mr. Morganson or Mr. Myers after that meeting?

A. We probably discussed it but the particulars, I don't remember. I have no record of it.

Q. You knew the picketing went back on, again?

A. Yes.

Q. Very shortly after that conversation?

A. Yes.

[fols. 77-186] Q. Now, before the present trial,—sometime within the last few days of few weeks—did you read the statement of facts showing the evidence at the first trial?

A. Yes, I did.

Q. You read the whole statement of facts?

Mr. Gill: Show him the document.

The Court: That is, all the testimony.

(Mr. Turner showing Statement of Facts to Witness:)

A. No, I didn't.

Mr. Gill: Did you read this document?

Q. Have you seen this document prior to this time? Have you read the statement?

A. The statement of facts.

Q. Do you know what is in it?

A. No, I don't.

Q. Did you appear at any time before the laundry workers' union, in June of 1946?

A. No, I had never been to a meeting of their union.

Q. You did have some conversation with Mr. Shannon of the City Hand Laundry?

A. Yes.

Q. You were present at the first trial throughout?

A. Yes.

Q. And you heard Mr. Shannon's testimony?

A. I did, yes.

Q. As a matter of fact, you were present throughout the first trial of this case?

A. Yes, I guess I was.

Mr. Turner: That is all.

Mr. Gill: That is all.

[fol. 187] OPINION

The Court: Believe me, I am not trying to be arbitrary. I am trying my best to honestly follow the opinion of the Supreme Court in this very case. As counsel suggests, I try to place myself in the position of the writer of that opinion and the signer of that opinion and try to ascertain what they meant. That is impossible to do. Just let me call your attention to one part of that opinion. The signer of that opinion says:

> "The leading case cited with approval on many occasions and never overruled, is Safeway Stores, Inc. . . ."

and this is the case on which this Supreme Court bases [fol. 188] its entire opinion. Now, I can show you two cases since then—in one of which Judge Simpson, the writer of this opinion, himself signed the opinion in which they expressly overruled that case. So, how in the world can I tell what is in the mind of a man who says this case has never been overruled, when he, himself, signed the opinion which expressly overruled it—and within a year, preceding? How can I tell what is in the mind of a man who says that, or the other signers of that opinion, for that matter? If there is any doubt in your mind, I can get that opinion and read it. Judge Simpson, himself, in this instance and in one other case he interpreted, also overruled that case.

(Argument by Mr. Turner.)

The Court: No, I am telling you I am trying my best to put myself in the position of the writers and signers of this opinion and try to find out what it means. I want to

analyze it. I've said it many times: I am honestly trying. I have no convictions in the matter—not at all, political or otherwise. I am trying to follow this opinion.

All right, when we tried the case, this court and counsel made no mental distinction between being placed on the unfair list and picketing. I don't think there should be any. I don't think there *is* any. Picketing is nothing more nor less than advising the public that this concern is on the unfair list. The two go together. If one is legal, the other is legal. If the one is illegal, the other is illegal—assuming, [fol. 189] of course, no violence accompanies it. I think that is axiomatic. Nobody made any distinction. Counsel, in the writing of their briefs, and this court, in its opinion, made no distinction. But, when it reached the Supreme Court, the Supreme Court definitely did make a distinction. There were two questions in this case: One, was whether or not the picketing was lawful. Another, was whether or not the union should be enjoined from placing Mr. Gazzam or the Enetai Inn on the unfair list. Now, the Supreme Court in its opinion definitely differentiated, as you will see; and when they say this, in the very last part of that opinion:

> "Appellant was entitled to recover any damages he may have suffered as a result of the picketing,"

they must have said it advisedly. The next sentence:

> "A study of the evidence reveals that it was not sufficient to prove that any damages were suffered by appellant as a result of having been placed on the union's u. fair list."

In other words, they say there is no evidence of damage resulting from being placed on the unfair list; that plaintiff is entitled to recover for damages resulting from the picketing. Now, the Supreme Court were the first ones to make a distinction. This court made no distinction (because I don't think there should be any). I think, following logically the Supreme Court, it should have held that this union was wrong in placing these people on the unfair list. Now, what did they hold? Five of them held that it was unlawful to picket. Five of them held that [fol. 190] they could be enjoined from picketing and plaintiff is entitled to damages for picketing. The other four, plus one of the original five judges, just as dis-

tinctly held that picketing was unlawful in this case and the union should be enjoined from it. But they definitely held, as clear as the English language can say it, that placing the firm on the unfair list was not unlawful and the defendant union could not be enjoined from it. And being not unlawful, I assume damages are not recoverable for doing a perfectly lawful thing. Five of the judges of the Supreme Court, including Judge Schwellenbach, say definitely that this union had the right—the Central Labor Council had a right—labor had a right—to place this concern on the unfair list. Now, if they had the right to do that, I think it is again axiomatic that you can't recover damages from a union which is doing an act it has a lawful right to do and does it in a lawful manner. That is exactly what the Supreme Court has held. How on earth can one recover damages for that is beyond my comprehension.

Now, let's try to reason this out, ourselves. The laundry—there is the real damage. No question about that. The damage there resulted from the failure of the City Hand Laundry to process this laundry. The fact that the Teamsters wouldn't come through the picket line and get the laundry resulted in some slight inconvenience, and some slight damage, but not much. Mr. Gazzam's employee put the laundry in the car and took it to the City Hand Laundry and picked it up after it was finished. But, [fol. 191] when the laundry refused to process the Inn's laundry, then there was a real damage, resulting in Mr. Gazzam doing the best he could—trying to supply laundry service on his own and it was a financial failure, and he lost money by virtue of the failure of the City Hand Laundry to process his laundry. And that action resulted by reason of the hotel being placed on the unfair list by labor organizations. Now, it seems to me preposterous to argue that that damage is a result of the picketing. Let me show you why: If for no other reason, there were a total of about fifty-three days from the time the picketing started until the picketing ended. It began, sometimes, at 8 o'clock in the morning, and many mornings at 10:30. There were a total of eleven days during that fifty-three days during which there was no picketing, whatever. Mr. Gazzam could have very easily got his laundry done on one of those eleven days during those fifty-three days during which there was no picketing whatever. In those

eleven days, Mr. Gazzam could have very easily put his laundry in his car and taken it to the City Hand Laundry, when there was no picketing. The City Hand Laundry could have done it very nicely. So, you see, it is foolish to argue that the City Hand Laundry refused to process this laundry because the place was being picketed. They refused to process it, as the evidence shows—and as we all know, because each labor union, theoretically—and actually, in most cases—not in all, because there sometimes are arguments between unions, as I pointed out awhile ago, in reference to the Boeing plant, where there is a definite argument between the union to [fol. 192] which the Boeing employees belong, and Mr. Beck's Teamsters Union, and Mr. Beck is absolutely ignoring the Boeing strike, and, according to the members of that union, he is making a desperate effort to break it (as the employer is). So, it doesn't always follow. But, if the Central Labor Council places this firm on the unfair list, every union that is affiliated with the Central Labor Council is supposed not to do work for the man or the employer who is on the unfair list. And, for that reason I say, it doesn't make any difference whether the firm is picketed or not. (Sometimes they don't even do this). Other unions know the situation when the firm is placed on the unfair list. There is picketing going on at Boeing's, today, and Mr. Beck's union members go through the line. He has advised in the paper he is trying to break the strike.

Now, it is just impossible for me to come to the conclusion that the failure to process this laundry, which is the real damage in this case, is caused by anything other than the fact that the Central Labor Council placed the Inn on the unfair list and every affiliated labor union—affiliated with the Central Labor Council—is supposed to respect that listing, "We Do Not Patronize." That is what Mr. Shannon said and what Mr. Gazzam said and what Mr. Holbrook said in their testimony in the former trial—that the failure to process the laundry was due to the firm being on the unfair list. If you are interested in reading it, I have the page numbers here.

[fol. 193] It is true that all of us in the trial were careless—and in some of the testimony were indiscriminate in the use of the words, "picketing" and "being placed on the unfair list;" without much thought or consideration that

there was any difference or distinction between the two. I didn't realize that there was any particular legal distinction. The Supreme Court made the distinction. And as I read this opinion, together with the concurrence of Judge Schwellenbach in which he says it is lawful to place this firm on the unfair list (and that is the holding of five judges) it is impossible for me to find that the failure to process this laundry and the resulting damage, which is very, very substantial—no question about that—is the result of or in any way connected with the picketing of this union. It is the result and solely the result from being placed on the, "WE DO NOT PATRONIZE," or unfair list.

Now, I am not going to accept counsel's suggestion that there was no damage here by reason of the picketing. The Supreme Court said that there was definite damage by reason of the picketing. That is their language, and I think there was damage. I think that these five or six, seven or eight salesmen who didn't want to cross the picket lines—didn't want to do so because, well, you have seen—(I have never been faced with that situation)—but you have seen politicians who will not go into a hotel or place of business that is being picketed. They might have actual knowledge that the hotel was on the unfair list but if there were no pickets, they would patronize the place. But, if there [fol. 194] were pickets, they didn't want Bill Jones or John Smith see them patronizing the place. They didn't want to be noticed patronizing a place being picketed. So there was a damage, clearly, from the loss of these five or six salesmen who used to stay, according to Mr. Gazzam, four or five days a week, and who quit. Some of them came back after the pickets were removed and some of them didn't. Now, it is impossible to calculate with mathematical accuracy what the loss was. The picketing occurred over a period of fifty-three days. There is, someplace, the rates of those rooms. Undoubtedly some of these people made other connections. They didn't come back, Mr. Gazzam said. There was some loss because of that. There was a slight inconvenience and some very minor loss for the week or ten days Mr. Gazzam had to pack his laundry through the picket line.

I'll allow judgment in the sum of $500, which I think is ample for any damage on account of the picketing.

Mr. Turner: If the Court please, there are two points I

want to cover, here. First, I want to include in the record the fact that Mr. Gill, during his argument took the position that this failure to get laundry was due to the effectiveness of the unfair listing in the month of July, and that he conceded that the unfair listing had become ineffective prior to September, when the City Hand Laundry resumed service . . . etc. (Further Argument)

The Court: I didn't want to take you at your word that these men didn't go through the picket line because the hotel was on the unfair list. They didn't go through the line [fol. 195] because it was being picketed. They didn't want to be seen patronizing a place being picketed.

Mr. Turner: The second point I wish to except to is: I wish to except to the court's going entirely outside of the record to make the finding that these union people were induced to withhold their patronage by virtue of the picketing, not the unfair listing. There is no evidence that these people that withheld their patronage were motivated in the slightest degree by the picketing. There is no evidence, either, who they were.

The Court: I am still going to give you a verdict of $500 in spite of your argument. I don't want to penalize you.

Mr. Turner: We are going to except——

The Court: To the whole thing? You can except to any judgment. You can argue to the Supreme Court that you are not entitled to any judgment, if you wish.

Mr. Gill: I object to the incorporation in the record of any portion of my statement unless the whole is incorporated.

(Further discussion)

The Court: There is nothing before the court. The case is decided.

[fol. 196] CERTIFICATE TO STATEMENT OF FACTS

STATE OF WASHINGTON,
COUNTY OF KITSAP;

I, H. G. SUTTON, the judge of the Superior Court of the State of Washington in and for the County of Kitsap and the judge before whom the foregoing cause was tried, being a retrial or further hearing in the same case tried earlier in this court, to wit, on October 22nd, 1946, before the same judge, do hereby certify that the matters and proceedings contained in the Statement of Facts, Part I, heretofore

certified in this cause under date of February 18th, 1947, and also those contained in the foregoing Statement of Facts, Part II, are all of the matters and proceedings occurring in said cause.

I do further certify that the foregoing Statement of Facts, Part I, certified February 18th, 1947, and the foregoing Statement of Facts, Part II, contain all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions and rulings thereon; and that Plaintiff's Exhibits A to S, inclusive, and Defendants' Exhibits No. 1 - No. 4, inclusive, hereto attached, are all of the exhibits offered upon the trial of said cause.

Counsel for plaintiff and counsel for defendants concur in this certification.

Done in Open Court 10 day of Jany., 1949.

H. G. Sutton, Judge.

Dated this .... day of December, 1948.

Curtis H. Coons
John C. Merkel

.....
.....
Attorneys for Plaintiff

.....
Attorney for Defendants

By.....
Attys. for Defts. Morganson and Nance

[fol. 197] Supreme Court of the United States

October Term 1949

No. .....

Building Service Employees International Union, Local 262, Sam Nance, William Morganson, Charley Meyer and E. W. Holbrook, Petitioners

vs.

W. L. Gazzam, Respondent

Stipulation to Omit From Printed Record Matters Not Essential to Consideration of Questions Presented

It is hereby stipulated by and between the parties hereto, through their undersigned attorneys of record, that the following documents and papers in the certified transcript

of the record may be omitted from the printed record, for the reason that they are not essential to a consideration of the questions presented by the petition for writ of certiorari:

From Transcript on First Appeal (Cause No. 30198):

	Page
(1) Notice of appeal	15
(2) Bond for costs on appeal	16-17

From Transcript on Second Appeal (Cause No. 30823):

(1) Oral notice of appeal	52
(2) Bond for costs on appeal	53-54

From Supplemental Transcript on Second Appeal (Cause No. 30823):

(1) Notice of appeal	55
(2) Supersedeas and cost bond on appeal	56-57

[fol. 198]

From Supreme Court Docket on Second Appeal (Cause No. 30823):

(1) Motion for stay of execution and enforcement of judgment and fixing amount of supersedeas and cost bond on petition for certiorari	60
(2) Order staying execution and enforcement of judgment and fixing amount of supersedeas and cost bond on petition for certiorari	61
(3) Supersedeas and cost bond on petition for certiorari	62-63
(4) Stipulation concerning statements of facts and exhibits	64
(5) Order concerning statements of facts and exhibits	65
(6) Praecipe for record	66-67

And it is further stipulated that the following pages and portions of pages of Part II of the Statement of Facts (containing the evidence taken and the matters and proceedings had on the second trial of the case) may be omitted from the printed record, for the reason that the testimony, evidence and matters contained in said pages and portions of pages are not essential to a consideration

of the questions presented by the petition for writ of certiorari:

Pages 3 to 59, line 1, inclusive
Pages 78 to 187, line 17, inclusive

Daniel D. Carmell, Samuel B. Bassett, Attorneys for Petitioners.

Merrill Wallace, Attorney for Respondent.

[fol. 199]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1949

No.....

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK, Petitioners,

vs.

W. L. GAZZAM, Respondent

SUPPLEMENTAL STIPULATION TO OMIT FROM PRINTED RECORD MATTERS NOT ESSENTIAL TO CONSIDERATION OF QUESTIONS PRESENTED

It is hereby further stipulated by and between the parties hereto, through their undersigned attorneys of record, that all exhibits attached to the statement of facts may be omitted from the printed record, for the reason that they are not essential to a consideration of the questions presented by the petition for writ of certiorari.

Daniel D. Carmell, Samuel B. Bassett, Attorneys for Petitioners.

Merrill Wallace, Attorney for Respondent.

[fol. 200] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 449

ORDER ALLOWING CERTIORARI—Filed December 19, 1949

The petition herein for a writ of certiorari to the Supreme Court of the State of Washington is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

SUBJECT INDEX.

PETITION.

PAGE

Statement of the matter involved 1

This Court has jurisdiction 7

The questions presented 8

Reasons relied upon for allowance of writ 9

BRIEF.

The opinions below 11

Jurisdiction 12

Statement of the case 12

Errors relied upon 17

Summary of Argument 18

Argument 19

I. The attempted organization of employees by a union is a lawful labor objective 19

II. The Washington State Supreme Court bases its opinion upon the alleged unlawfulness of peaceful picketing in the absence of a direct employer-employee relationship, and upon no other ground 22

III. Peaceful picketing is protected by the right of freedom of speech, nothwithstanding the absence of a direct employer-employee relationship 24

IV. The state court's opinion imposes an indiscriminate restriction upon free discussion of matters affecting the public interest 27

V. No coercion was exercised upon the employer .. 34

VI. The state statute involved gives no weight to the decision of the State Supreme Court 36

Conclusion 37

TABLE OF CASES AND AUTHORITIES.

American Federation of Labor v. Swing, 312 U. S. 321 ..... 3, 5, 9, 16, 23, 25, 29, 33, 37
American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 20
Bakery and Pastry Drivers and Helpers v. Wohl, 315 U. S. 769 ..... 5, 16, 32
Cafeteria Employees Union v. Angelos, 320 U. S. 293 ..... 6, 16
Cantwell v. Connecticut, 310 U. S. 296 30
Carlson v. California, 310 U. S. 106 30
Carpenters & Joiners Union v. Ritter's Cafe, 315 U. S. 722 17
Giboney v. Empire Storage and Ice Co., 336 U. S. 490 ..... 6, 17, 30
Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287 ..... 5, 6, 16, 24, 29, 30, 34, 35
Nann v. Raimist, 255 N. Y. 307 21
National Labor Relations Board v. Ford Motor Co., 114 F. 2nd 905 33
National Labor Relations Board v. Jones and Laughlin Steel Corporation, 301 U. S. 1 21
O'Neil v. Building Service Employees Union, 9 Wash. 2nd, 507 ..... 3, 15, 19, 23, 28
Palko v. Connecticut, 302 U. S. 319 29
Roth v. Local Union, 216 Ind. 363 28
Safeway Stores v. Retail Clerk's Union, 184 Wash. 322 28
S and W Fine Foods v. Retail Delivery Drivers and Salesmen's Union, 11 Wash. 2d 262 ..... 3, 15, 19, 23, 28
Senn v. Tile Layers Protective Union, 301 U. S. 468 ..... 22, 24, 32
Swing v. American Federation of Labor, 372 Ill. 91 25
Thornhill v. State of Alabama, 310 U. S. 88 ..... 5, 6, 24, 29, 30

Other Authorities.

Gregory and Katz, Labor Law 7
United States Code, Title 28, Action 1257 ..... 7, 12
United States Code, Title 28, Section 2101 7
Washington Labor Disputes Act 19, 36

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK,

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petitioners, Building Service Employees' International Union, Local 262, Sam Nance, William Morganson, Charles Meyer and E. W. Holbrook, respectfully petition this Honorable Court for a writ of certiorari to the Supreme Court of the State of Washington.

Summary Statement of the Matter Involved.

The Union, one of the petitioners herein, which represents the interests of hotel employees, sought to persuade the respondent, a hotel owner, to sign a collective bargaining agreement that would regulate the working conditions of his employees and require them to join the union. The

respondent declared that his answer would depend upon the action of his employees (Rec. 54). Upon the insistence of the Central Labor Council of Bremerton, he arranged a meeting between the Union representatives and his employees. The meeting which was presided over by respondent's hotel manager and attended by eleven employees ended in a refusal of nine employees to join the Union (Rec. 85). When the respondent, thereupon, failed to sign a collective bargaining agreement, the Union began to peacefully picket his hotel (Rec. 57). At the same time he was placed by the Central Labor Council on the "We do not patronize" list (Rec. 75, 166). Later on, the Union modified its proposal and submitted another proposed agreement to the respondent, stating that regular employees working at that time should not be required to become members of the Union and that only new employees should join the Union (Rec. 14, 74, 77, 110-111). Since the respondent's attitude remained unchanged, the peaceful picketing continued.

The respondent filed suit against the petitioners, asking for an injunction and for the recovery of damages caused to him by the picketing and the being placed on the "We do not patronize" list (Rec. 30, 34). After the respondent had introduced his evidence, the trial court granted a motion for nonsuit, and dismissed the complaint (Rec. 11). Upon appeal to the State Supreme Court of Washington, that Court with four dissents and one partial concurrence, reversed the lower court's decision, (Rec. 12-25), basing its ruling solely upon the legality of the picketing involved and stating that peaceful picketing, in the absence of a direct employer-employee relationship, was unlawful, since it was designed to coerce the employer to request his employees to join the union. The Court reached this decision by referring to the public policy statement of the Washington

Labor Disputes Act (Rem. Rev. Stat. (Sup.) § 7612-2), and to the rules of common law as announced by the courts of the State of Washington (Rec. 24). In the same opinion, the Court expressly overruled two previous decisions rendered by it (*O'Neil* v. *Building Service Employees International Union, Local No. 6,* 1941, 9 Wash. 2d 507, 115 P. 2d 662, 137 A.L.R. 1102; and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers Union, Local No. 353,* 1941, 11 Wash. 2d 262, 118 P. 2d 962), which had declared, in accordance with the case of *American Federation of Labor* v. *Swing,* 312 U.S. 321, 61 S. Ct. 568, 85 L. Ed. 855 (1941), that peaceful picketing, even in the absence of a direct employer-employee relationship, was protected by the right of freedom of speech, regardless of the common law of a state or the phraseology of a state anti-injunction act and its interpretation by the state courts, and that the state courts were under a duty to follow the decisions of the United States Supreme Court in the interpretation of the Federal Constitution.

After the remanding of the case to the trial court, the issues were tried again and a judgment was rendered by the trial court allowing the amount of $500 as damages caused by the picketing, but not permitting any damages for placing respondent's name on the "We do not patronize" list (Rec. 38-39, 172). Upon subsequent appeal of both parties to the State Supreme Court, the judgment of the trial court was affirmed, due to the lack of a majority for any one of several propositions (Rec. 40), the Supreme Court of Washington making the following statement:

> "The members of this court have been unable to agree. Four judges were of the view that the judgment should be modified to the extent of allowing appellant Gazzam recovery of damages occasioned by picketing and by being placed on the unfair list. Three

judges were of the opinion that recovery should only be allowed for damages occasioned by the picketing, and two judges were of the opinion that no damages should be allowed either for picketing or placing on the unfair list."

It should be noted that on retrial the trial court found that: "The picketing was at all times peaceful, the record disclosing no evidence whatsoever of violence or threats of violence" (Rec. 144), and this statement is at no place denied. The respondent testified that there was but one picket; that the picket did not come on quite a number of days; that sometimes he was there from two to four hours, and several times for eight hours (Rec. 57). On the second trial, the court held that laundry damage charged by respondent was a very minor loss in no way connected with picketing; took the position that the state Supreme Court had denied any right to damages because the hotel had been placed on the unfair list; and allowed a $500.00 judgment "for any damage on account of the picketing" (Rec. 172). The judgment of the trial court was affirmed by the state Supreme Court with respect to $500.00 "as damages occasioned by the picketing", (Rec. 40). This case, therefore, relates only to peaceful picketing, and the final judgment is specifically so restricted, (Rec. 40), with an exclusion of all other issues by disagreement among the judges.

Since the State Supreme Court dealt with the aspect of picketing only, this case must be judged from that angle alone. Thus, the issues are narrowed to the problem whether picketing, admittedly peaceful, and carried on by workmen engaged in the same industry as the employer, for the purpose of enlarging the membership of their union, is protected by the right of freedom of speech, or whether a state court may disregard the constitutional guarantees involved in such a case and declare peaceful picketing un-

lawful and coercive, simply because of the absence of a direct employer-employee relationship, and of the fact that the picketing proves annoying to the employer and results in some financial loss to his business.

This Court has held that "peaceful picketing is the workingman's means of communication" (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200); that "in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution" (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 102, 60 S. Ct. 736, 84 L. Ed. 1093, 1102); that "the scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state", and that a state "cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him". (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 326, 61 S. Ct. 568, 85 L. Ed. 855, 857). This Court has also declared that a state may not defeat the constitutional freedoms "by insubstantial findings of fact screening reality" (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 841, 132 A.L.R. 1200), and that "one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive." (*Bakery and Pastry Drivers & Helpers Local 802 of I. B. T.* v. *Wohl*, 315

U. S. 769, 774, 62 S. Ct. 816, 86 L. Ed. 1178, 1183). Although this Court recognized that even peaceful picketing may be restricted in certain narrowly defined situations, as for instance, in cases where it is conducted en masse (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 105, 60 S. Ct. 736, 84 L. Ed. 1093, 1104) or enmeshed with violence (*Milk Wagon Drivers* v. *Meadowmoor*, 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836) or carried out as a means to perpetrate a criminal act in violation of a penal statute (*Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 93 L. Ed. 649), it has consistently stated that peaceful picketing, being a means of communication and persuasion, may not be proscribed in such a vague and general manner as to "exclude working men in a particular industry from putting their case to the public in a peaceful way." (*Cafeteria Employees Union, Local 302* v. *Angelos*, 320 U. S. 293, 296, 64 S. Ct. 126, 88 L. Ed. 58, 60.) This Court has also declared "that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute", and that "abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises", but "that the danger of injury to an industrial concern is neither so serious nor so imminent as to justify" a "sweeping proscription of freedom of discussion." (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 104, 105, 60 S. Ct. 736, 84 L. Ed. 1093, 1103, 1104.)

Since the grounds of the State Court's decision in the present case are so broad that they could "be applied to ban all truthful publications of the facts of a labor controversy" (*Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 93 L. Ed. 649, 654), they are obviously, in this and in other respects, in conflict with the interpretation of the

right of freedom of speech as established by this Court, and cannot be justified. Gregory and Katz, in their book on Labor Law, (Charlottesville, Va., 1948), p. 334, say as to the present case that "it is hard to believe that this decision, if it were taken up to the United States Supreme Court on constitutional grounds under the Thornhill Doctrine, would not be reversed."

This Court Has Jurisdiction.

Jurisdiction of this Court is invoked under Section 1257 (3) of the Judicial Code (28 U.S.C.A., Section 1257 (3)), with respect to a judgment rendered by the highest court of the state in which a decision could be had.

There are special and important reasons for the granting of review on writ of certiorari. (Supreme Court Rule 38, par. 5.)

Rehearing was denied in this case and judgment entered by the Supreme Court of the State of Washington on August 12, 1949 (Rec. 41).

As is specifically indicated in the brief attached hereto, the enforcement of the judgment is stayed by action of the Chief Justice of the court rendering the judgment in compliance with Section 2101 (e) of Title 28, United States Code.

The jurisdiction over the matter at hand is clear since freedom of speech was made the decisive issue in proceedings before the state courts, the State Supreme Court declaring in its opinion as follows (Rec. 15):

> "Respondents maintain that picketing by a union which does not include within its membership any employees is legal. They base their contention upon the right of free speech as guaranteed by the constitution of the United States. Amendment 1."

Thus, it is clearly within the province of this Court, as the final arbiter in all questions involving the Federal Constitution, to determine, whether the right of freedom of speech protected the activities of the petitioners.

The Questions Presented.

The only issue involved in the present case is the interrelation between peaceful picketing and freedom of speech. This issue may be broken down into the following questions:

1. May peaceful picketing be outlawed by statute or court decision of a state, simply because the picketing is carried out by workmen who do not stand in a direct employer-employee relationship to the picketed employer, and may workmen in a particular industry thus be prevented from submitting their case to the public in a peaceful way?

2. May a state declare peaceful picketing coercive merely because of the absence of a direct employer-employee relationship and thus "exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him"?

3. May a state Court effectively disregard the constitutional guarantee of free speech by making "insubstantial findings of fact screening reality" and use these findings to declare conduct unlawful which otherwise and in previous decisions by the same court was held and deemed to be lawful and protected by the Fourteenth Amendment to the Constitution of the United States?

4. May a state outlaw peaceful picketing because it "has the potentiality of inducing action in the interests" of the union rather than the employer, and "may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute"?

Reasons Relied Upon for Allowance of Writ.

1. The Supreme Court of the State of Washington erred in declaring peaceful picketing unlawful merely because of the absence of a direct employer-employee relationship, since this Court, which is the final arbiter in all questions involving the Federal Constitution, has decided in the case of *American Federation of Labor* v. *Swing*, 312 U. S. 321, that "a state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him," and since the State Court was bound to follow that decision. (Article VI of the United States Constitution.)

2. The Supreme Court of the State of Washington erred in declaring peaceful picketing coercive, when it is in fact carried out without coercion or violence by persons other than those directly employed by the picketed employer. The fact of eventual annoyance to the employer created by such picketing, and the fact that such picketing may induce action in favor of the union rather than the employer, are not sufficient reasons, and do not entail such a clear and present danger to the public interest, as to authorize a state court to disregard the constitutional guarantee of free speech protecting such picketing.

3. The Supreme Court of the State of Washington erred in declaring the peaceful picketing involved in this case coercive by stating that it was designed to compel the employer to request his men to join the Union, since, by the Court's own statement of facts (Rec. 14), the Union had modified its original proposal and requested merely that new employees, hired to replace regular employees having

left the employ, should become union members. Thus, there was no factual basis for the State Court's finding of "coercion", even if there were coercion (which there was not) in the original picketing which involved all existing employees.

4. The Supreme Court of the State of Washington erred in declaring the peaceful picketing involved in this case coercive, since, according to the respondent's own statement, there was but one picket who did not appear at all "on quite a number of days" and who often remained from only two to four hours, when he appeared (Rec. 57). Thus, the obvious purpose of the picketing was the informing of the public of the fact of a labor dispute.

Respectfully submitted,

DANIEL D. CARMELL,
WALTER F. DODD,
Attorneys for Petitioners.

FRED HERZOG,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK,

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The Opinions Below.

The opinion of the Supreme Court of the State of Washington, reversing the trial court's judgment of dismissal of the action, and remanding the case to the trial court for further proceedings, was rendered on December 22, 1947, with four dissents, and is reported in 29 Wash. 2d 488, 188 Pac. 2d 97. It appears on pages 12-25 of the Transcript of Record.

The final opinion of the State Supreme Court, merely adhering to the prior opinion, and affirming the trial court's decision without discussion but with dissents, was rendered on July 1, 1949, and judgment was entered on August 12, 1949. They appear at pages 40-41 of the Transcript of Record.

Jurisdiction.

The opinion of the Supreme Court of the State of Washington decides questions which have an important bearing upon the right of freedom of speech as interpreted by this Court. The opinion of the State Supreme Court deals expressly with the right of freedom of speech in its relation to peaceful picketing, and denies a privilege which has been held to exist by this Court. Thus, an important question concerning the Fourteenth Amendment to the United States Constitution is raised, and jurisdiction is invoked under Section 1257 of the Judicial Code.

A petition for rehearing in this case was denied, and judgment was entered by the Supreme Court of the State of Washington on August 12, 1949 (Rec. 41).

On August 15, 1949, the Chief Justice of the Supreme Court of the State of Washington (the state court of last resort) entered an order staying execution and enforcement of the judgment for a period of sixty days, and fixing the amount of supersedeas and cost bond as a basis for petitioning for a writ of certiorari from this Court. The required supersedeas and cost bond was filed and approved by such Chief Justice on the same day (Rec. 175).

On September 29, 1949, the Chief Justice of the State Supreme Court entered an order extending the stay of execution and enforcement of the judgment until final action on the petition for certiorari has been taken by this Court.

Statement of the Case.

The facts of this case are simple and not in dispute.

The respondent is the owner of the Enetai Inn, a hotel situated in the city of Bremerton, Washington. During

the time when the events, which gave rise to this case, took place, the respondent employed about fifteen persons for the purpose of running the hotel (Rec. 52). None of these employees belonged to the petitioning Union which organized and represented other hotel employees in their collective bargaining dealings with the respective employers (Rec. 53).

Just prior to May 1, 1946, the petitioners William Morganson and Charles Mayer, as representatives of the Union involved in this case, asked the respondent if he was agreeable to making a contract with the Union (Rec. 53-54). At that time the requested contract would have required all of the employees to join the Union (Rec. 74). The respondent replied that his answer would depend upon the action of his employees (Rec. 54). Giving the union representatives permission to talk with his employees, he went to Los Angeles for a short visit, and after his return was again approached by the Union to sign a contract, and again he answered that the decision was up to his employees (Rec. 54).

On May 2, 1946, the respondent received a letter from the Central Labor Council of Bremerton which stated that the petitioning Union had requested the Labor Council to place the respondent's hotel on the "we do not patronize" list, and that it was the policy of the Council before doing so, to call a meeting of both parties so as to give them opportunity to arrive at a settlement. The letter named the date and hour of the proposed meeting (Rec. 55; 157). The respondent's attorney attended that meeting, and, at the request of the Union, a meeting was arranged on May 10, 1946, between the Union and the respondent's employees (Rec. 56). This meeting, which was held under the chairmanship of the hotel's manager, was attended by

eleven employees. At the end of the meeting nine of the eleven employees indicated in a vote, proposed by the manager, that they did not desire to join the Union (Rec. 84-85). When no action with respect to a contract was forthcoming from the respondent, the Central Labor Council notified the respondent that his hotel was placed on the "We do not patronize" list (Rec. 75; 166). Afterwards (May 31, 1946), the Union began to peacefully picket, at irregular intervals, the respondent's place of business, and continued thus until July 20, 1946 (Rec. 57; 102). Shortly after June 22, 1946 (Rec. 74; 110), the Union submitted a new proposal to the respondent, dropping the condition that existing employees must join the Union and requesting only that new employees should become union members within fifteen days after they were hired. The proposal which is quoted in the opinion of the State Supreme Court, reads as follows (Rec. 14):

> "It is agreed by both parties hereto that the regular employees now working at the hotel shall not as a condition of continued employment be required to become members of the union. It is further agreed that any new employees who are hired to replace regular employees who have left through normal turnover or discharge shall as a condition of employment become members of the union. New employees shall be required to become members of the Union within fifteen days after employment. It is understood that the employer shall have the voluntary right to either call the union for new employees or hire anyone whom he desires the only factor being that a condition of employment of new employees shall be that they come into the union within fifteen days. It is also agreed that the union shall be the bargaining agent for both Union and non-union employees and that any wages, hours and working conditions established for Union employees shall be paid also to the non-union employees."

The respondent's answer to the Union's proposal was an action for injunction, claiming that he suffered damages through the picketing, and being placed on the "We do not patronize" list (Rec. 1; 26).

After the respondent had introduced his evidence, the trial court granted a motion for nonsuit, and dismissed the complaint (Rec. 11). Upon appeal, the State Supreme Court of Washington, with four dissents and one partial concurrence, reversed the trial court's decision (Rec. 12-25) saying that there was no proof of damages suffered by the placing of the respondent's name on the "We do not patronize" list, and basing its ruling solely upon the legality of the picketing involved. It stated that peaceful picketing, in the absence of a direct employer-employee relationship, was unlawful, since it was designed to coerce the employer to request his employees to join the Union.

In the same opinion, the Court expressly overruled two previous decisions rendered by it (*O'Neil* v. *Building Service Employees Int. Union, Local No. 6*, 9 Wash. 2d. 507, 115 P. 2d 662 (1941), and *S. and W. Fine Foods, Inc.* v. *Retail Delivery Drivers Union, Local No. 353*, 11 Wash. 2d 262, 118 P. 2d 962 (1941)), which had declared, in accordance with the case of *American Federation of Labor* v. *Swing*, 312 U. S. 321, that peaceful picketing, even in the absence of a direct employer-employee dispute, was protected by the right of freedom of speech, regardless of the common law of a state or the wording of a state anti-injunction act and its interpretation by the state courts, and that the judges of a state were under a duty to follow that decision, like any other decision of the United States Supreme Court interpreting the Federal Constitution.

After the remanding of the case to the trial court, the issues were tried again, and the trial court rendered judg-

ment in favor of the respondent, awarding him the amount of $500 on damages for the picketing, but did not allow him any recovery for the placing of his name on the "We do not patronize" list (Rec. 38-39; 172). Upon subsequent appeal of both parties to the State Supreme Court, the judgment of the trial court was affirmed, due to the lack of a majority for any one of the several views expressed by the judges of the State Supreme Court (Rec. 40).

Since the opinion and the final judgment of the State Supreme Court dealt only with the aspects of picketing, that issue alone may be examined.

It is the position of the petitioners that the constitutional question of the interrelation of peaceful picketing and freedom of speech as it appears in the present case, was settled by this Court in the cases of *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855 (1941); *Bakery and Pastry Drivers and Helpers Local 802 of I. B. T.* v. *Wohl*, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 (1942), and *Cafeteria Employees Union, Local 302* v. *Angelos*, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58 (1943), and that the judges of the State Court are bound to follow these decisions. In these cases it was said that the constitutional guarantee of freedom of discussion may not be infringed either by a statute or by the common law policy of a state forbidding resort to peaceful persuasion through picketing, merely because there was no immediate employer-employee dispute. Yet, this was precisely the thing done by the Supreme Court of the State of Washington in the instant case. It declared peaceful picketing unlawful, not because it was carried out "en masse", or was "enmeshed with violance" (*Milk Wagon Drivers' Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 292, 297, 61 S. Ct. 552, 85 L. Ed. 481, 483), or was "an essential

and inseparable part of a grave offense against an important public law" providing criminal punishment for its violation (*Gibony* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 69 S. Ct. 684), or because the Court desired "to localize industrial conflict by prohibiting the exertion of concerted pressure directed at . . . [a] business, wholly outside the economic context of the real dispute" (*Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, 726, 62 S. Ct. 807, 86 L. Ed. 1143), but because the Court refused to recognize the constitutional right to communicate peaceably to the public the facts of a dispute in cases where the communication did not concern a dispute between an employer and those directly employed by him. This Court has repeatedly declared that it will not uphold such type of reasoning as a ground for disregarding the constitutional guarantee of free speech, particularly not in those cases where a state court has labeled picketing as coercive when this Court has found differently.

Errors Relied Upon.

The Supreme Court of the State of Washington erred in disregarding the constitutional guarantee of free speech by announcing that this guarantee was lost if the peaceful picketing was carried out by workmen who were not directly employed by the picketed employer. It erred in disregarding the decisions of this Court which have settled that problem. It erred in overruling its own prior decisions which had determined the problem in accordance with the decisions of this Court and had recognized the duty of the state judges to follow the decisions of this Court in all questions involving the Federal Constitution.

It erred in overruling its prior decisions and thus declar-

ing conduct unlawful which was lawful at the time it was engaged in.

It erred in declaring peaceful picketing coercive, merely because it might induce the picketed employer to take action in favor of the union.

It also erred in holding the picketing coercive, since it was carried out only intermittedly and irregularly and then only by one picket, therefore obviously only for the purpose to inform the public of the existence of a labor dispute. It erred in holding the conduct of the Union coercive, stating that it was designed to force the employer to have his employees join the Union, since that statement was without foundation after the Union had abandoned its demand that regular employees then working for the hotel should be required to join the Union.

Summary of Argument.

This Court has determined that no coercion or force is indicated by facts such as are here established, and that the peaceful picketing such as is here involved is within the guarantee of freedom of speech under the Fourteenth Amendment to the United States Constitution. This Court has also determined that freedom of speech under the Fourteenth Amendment is protected against infringement by state action, regardless of whether such action is based upon state legislation or state judicial construction of principles of common law.

ARGUMENT.

I.

The attempted organization of employees by a union is a lawful labor objective.

The opinion of the Washington State Supreme Court rests upon the basis that a labor union may not engage in peaceful picketing in order to attempt the organization of an employer's workers, if none of these workers is a member of the union or has expressed any desire to join the union, and that peaceful picketing in such a situation is coercive, its purpose being to compel the employer to request his men to join the union.

In making that determination, the State Supreme Court declared that such a conduct was in violation of the Washington Labor Disputes Act (Rem. Rev. Stat. (Sup.) 7612-2) and of the common law as announced in previous decisions of the courts of the State of Washington. Both contentions are incorrect. The cases of *O'Neil* v. *Building Service Employees International Union, Local No. 6,* 9 Wash. 2d, 507, 115 P. 2d 662, 137 A. L. R. 1102 (1941), and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers and Salesmen's Union, Local 353,* 11 Wash. 2d 262, 118 P. 2d 962 (1941) recognized the organization of workers in cases where no direct employer-employee relationship existed, as a lawful labor objective for the State of Washington and established that peaceful picketing employed to achieve that purpose was protected by the right of freedom of speech. The State Supreme Court has now ignored the fundamental question of freedom of speech involved in these picketing

situations and the protection which must be accorded to that right. It also has ignored the fact that the Union, after having originally asked that all employees should become Union members, modified this demand and requested that only new employees hired in the natural course of business should join the Union (Rec. 14). Thus, the Court's statement that the purpose of the picketing was to compel the employer to request his existing employees to join the Union, was without any basis.

Already at a comparatively early stage in the development of the law of labor relations in this country, it was recognized by this Court and the highest courts of many states that workmen have a right to enlarge the membership of their union by attempting to bring all those within the fold of their organization who are engaged in the same type of work in the community. This recognition was based upon the economic principle that the working conditions of wage earners engaged in a trade vitally affect the wage and living standards of union men performing the same type of work in the same locality. This principle found its best expression in the following words of Chief Justice Taft in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 66 L. Ed. 189, 200, 27 A. L. R. 300 (1921):

> "To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild. It is impossible to hold such persuasion and propaganda without more, to be without excuse and malicious."

Thus, this Court stated clearly and precisely that it was a legitimate objective of unions to organize all those who compete by their labor with union men, or work in the same trade or industry in the same locality.

The right of employees to organize was reiterated by this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33, 57 S. Ct. 615, 81 L. Ed. 893, 909, 108 A. L. R. 1352 (1937). In that case, Chief Justice Hughes said with respect to the self-organization of employees:

> "That is a fundamental right. . . . Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 78, 66 L. Ed. 189, 27 A. L. R. 360."

Chief Judge Cardozo expressed the same thoughts in *Nann* v. *Raimist*, 255 N. Y. 307, 174 N. E. 690, 73 A. L. R. 669, 674:

> "If the defendant [union] believes in good faith that the policy pursued by the plaintiff and by the shops united with the plaintiff is hostile to the interests of organized labor, and is likely, if not suppressed, to lower the standards of living for workers in the trade, it has the privilege by the pressure of notoriety and persuasion to bring its own policy to triumph. *Exchange Bakery and Restaurant* v. *Rifkin*, *supra*; *Bossert* v. *Dhuy*, 221 N. Y. 342, 117 N. E. 582, Am. Cas. 1918D 661."

Thus, the law recognized the attempt of unions to enlarge their membership by peaceful means, as a legitimate labor objective.

II.

The Washington State Supreme Court bases its opinion upon the alleged unlawfulness of peaceful picketing in the absence of a direct employer-employee relationship, and upon no other ground.

The Union tried to accomplish the lawful labor objective of enlarging its membership by peaceful picketing. This is recognized by the State Supreme Court in its opinion which dealt only with the aspects of picketing involved in the case and did not take into consideration other means employed by the Union. This is also apparent from the final judgment of the State Supreme Court in this case, which, in affirming the trial court's decision, allowed damages only for the picketing which took place and for no other Union conduct (Rec. 40). Since the State Supreme Court based its ruling solely upon the asserted illegality of the picketing employed, the case must be viewed and determined only from that angle.

The term "peaceful picketing" employed by the State Court "implies not only absence of violence, but absence of any unlawful act". (*Senn* v. *Tile Layers Protective Union, Local No. 5*, 301 U. S. 468, 479, 57 S. Ct. 857, 81 L. Ed. 1229, 1236.) Yet, although the picketing was peaceful, the State Supreme Court adopted the opinion that it was unlawful. It reached that conclusion by referring, in the main, to decisions that were rendered under the Washington Labor Disputes Act and other so-called state anti-injunction acts, which were interpreted by the state courts

to exclude from the protection of the Act picketing other than that of the immediate employees against their employer. The State Court discretely relied upon its decisions and decisions of states which *were reached before February 10, 1941*; the day on which this Court rendered its decision in *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855, which declared that, regardless of the phraseology of a state anti-injunction act and its interpretation by a state court, the constitutional guaranty of freedom of speech protected peaceful picketing even in those cases where there was no immediate employer-employee relationship. To reach the desired result, the State Supreme Court not only ignored the *Swing* case but was forced to overrule expressly *O'Neil* v. *Building Service Employees International Union, Local No. 6*, 9 Wash. 2d 507, 115 P. 2d 662, 137 A. L. R. 1102 (1941), and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers and Salesmen's Union, Local No. 353*, 11 Wash. 2d 262, 118 P. 2d 962 (1941). These cases were decided after the decision in the *Swing* case and recognized that peaceful picketing as a means of communication was protected by the Fourteenth Amendment to the United States Constitution not only in cases where there was a direct employer-employee relationship but also in cases where no such relationship prevailed, that the final authority to pass upon the legality of such conduct, which involved a federal constitutional right, was vested in the United States Supreme Court, and that state courts had to decide such cases in accordance with the views expressed by the United States Supreme Court and not in accordance with their own interpretation of the respective anti-injunction acts. Thus, it is obvious that the opinion of the State Supreme Court in the present case is based solely upon the alleged unlawfulness of the picketing involved and not upon any other conduct of the Union. This

is also borne out by the previously mentioned fact that the final judgment of the State Supreme Court in this case allowed damages only for the peaceful picketing in which the Union engaged and not for any other activities.

III.

Peaceful picketing is protected by the right of freedom of speech, notwithstanding the absence of a direct employer-employee relationship.

"Peaceful picketing is the workingman's means of communication." (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200.) As such "members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." (*Senn* v. *Tile Layers Protective Union Local No. 5*, 301 U. S. 468, 478, 57 S. Ct. 857, 81 L. Ed. 1229, 1236).

Since the decision by this Court in *Thornhill* v. *State of Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940), it has been established that a state may not indiscriminately ban "the dissemination of information concerning the facts of a labor dispute", whether that information is conveyed through advertisements, circulars, speech, or banners carried by picketing workingmen. As a logical consequence of the interrelation between peaceful picketing and freedom of speech it was determined by this Court in 1941, that "a state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those

directly employed by him." (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 326, 61 S. Ct. 568, 85 L. Ed. 855, 857.)

In the *Swing* case, which originated in the State of Illinois, the facts were almost identical with that in the present case. As stated by the Illinois Supreme Court in *Swing* v. *American Federation of Labor*, 372 Ill. 91, 22 N. E. 2d 857, Swing was the owner of a beauty parlor in Chicago. One morning, four officials of the Hairdressers Union "called upon Swing and demanded that he require all of his employees to join that union to which none of them belonged, and to which none of them wished to belong. Swing, took a neutral position in the matter, permitted the agents to mingle with his employees, and permitted the employees to do as they pleased." There was no dispute between Swing and his employees, who were satisfied with wages, hours and working conditions. When the employees declined to join the union, the union members began to picket Swing's beauty parlor. Swing and his employees thereupon filed suit against the union, asking that the picketing be enjoined. The Illinois Supreme Court adopted the same view as that adopted by the Illinois Appellate Court, answering in the negative the following question stated by the Appellate Court:

> "The question presented for determination is whether a labor union, in which none of its members are present, past or expectant employees of an employer, has a right to picket his place of business, *for the purpose of compelling the employees, who do not wish to join a union, to do so.*" (Emphasis supplied.)

This Court reversed the decision of the Illinois Supreme Court. It declared that it was asked "to sustain a decree which * * * asserts as the common law of a state that there can be no peaceful picketing or peaceful persuasion in re-

lation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him." This Court proceeded as follows (312 U. S. 325, 326):

> "Such a ban of free communication is inconsistent with the guarantee of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. *The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.* The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 78, 66 L. Ed. 189, 27 A.L.R. 360. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case." (Emphasis supplied.)

In comparing the *Swing* case with the one under consideration, the similarity between the two is striking. Here as there, a union attempted to organize the employees of a business enterprise who were not desirous to join the union. Here as there, the employer granted to the union officials opportunity to talk to the employees so that they might be

persuaded to join the union. Here as there, the employer declined in the end to recognize the union as collective bargaining representative and was picketed by the union. Here as there, the peaceful picketing was declared to be coercive by the state courts and a judgment was rendered against the union. It is respectfully submitted that, due to the striking similarity in facts, here as there, the same decision should be reached by this Court, reversing the state court's decision as being an infringement upon the right of freedom of speech and, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States.

In this connection, however, attention may be called to the fact that the coercion alleged by the Supreme Court of Illinois in the *Swing* case was greater than that alleged by the Supreme Court of Washington in the present case. The picketing in the *Swing* case related to all employees who were not members of the union. Picketing in the present case related only to new employees, after the proposal which is quoted at page 14 of this brief.

IV.

The State Court's opinion imposes an indiscriminate restriction upon free discussion of matters affecting the public interest.

As mentioned previously, the opinion of the Supreme Court of the State of Washington in the present case demonstrates that the peaceful picketing in question was deemed coercive and, therefore, unlawful, only because it was carried out by a union which had no members among the employees sought to be organized. That this was the basis of the opinion is evidenced by the language adopted

by the Court from the decisions in *Safeway Stores, Inc.* v. *Retail Clerks' Union Local No. 148*, 184 Wash. 322, 51 P. 2d 372, and *Roth* v. *Local Union No. 1460 of Retail Clerks Union*, 216 Ind. 363, 24 N. E. 2d 280, both of which decisions were rendered before 1940, and both of which, without even mentioning the right of freedom of speech, held picketing coercive if there was no direct employer-employee relationship involved. But this view of the State Supreme Court in this case is also indicated by the fact that the Court expressly overruled the cases of *O'Neil* v. *Building Service Employees Int. Union, Local No. 6*, 9 Wash. 2d 507, 115 P. 2d 662, 137 A.L.R. 1102 (1941), and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers and Salemen's Union, Local No. 353*, 11 Wash. 2d 262, 118 P. 2d 962 (1941), which involved peaceful picketing in situations where no employer-employee relationship existed between the disputants, and where injunctive relief was denied for the reason that the right of peaceful picketing was guaranteed by the right of freedom of speech embodied in the Fourteenth Amendment to the United States Constitution. Thus, the Supreme Court of the State of Washington has in the present case altered its position and readopted the view that it does not permit peaceful picketing in the absence of a direct employer-employee relationship, and deems such picketing unlawful.

A state may not ban free discussion and persuasion under the guise of averred unlawfulness. Yet, this is the very thing which the Supreme Court of the State of Washington attempts to do in the present case, and which the State of Illinois attempted to do in the *Swing* case. It declared certain labor conduct and the objectives to be attained thereby, to be unlawful, simply because such conduct proved annoying to the individual employer involved, and it used the alleged unlawfulness of the labor objective as a device to

ban all persuasion and free discussion regarding the underlying facts which are of vital concern to the public. But, "it does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society". (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 104, 60 S. Ct. 736, 84 L. Ed. 1093, 1103.)

Freedom of speech must be guarded with a jealous eye (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 325), and a generous scope must be given to its guarantee. (See *Milk Wagon Driver's Union of Chicago* v. *Meadowmoor Dairies*, 312 U. S. 287, 296, 61 S. Ct. 552, 85 L. Ed. 838, 842.) "Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every form of freedom." (Mr. Justice Cardozo in *Palko* v. *Connecticut*, 302 U. S. 319, 327, 58 S. Ct. 149, 152, 82 L. Ed. 288.) Hence, this all-important freedom may not "be defeated by insubstantial findings of fact screening reality." (*Milk Wagon Driver's Union of Chicago* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 841.) However, that was done by the Supreme Court of the State of Washington in the present case. It labeled the peaceful picketing as coercive, not because of any threat, force or intimidation used, but simply because of the absence of a direct employer-employee relationship. The Court made it clear in its opinion—by its statements and by the fact that it expressly overruled those cases which held peaceful picketing lawful regardless of the existence of a direct employer-employee relationship—that whatever the facts might be in an individual case, and however peacefully a union might proceed—in the absence of a direct employer-

employee relationship, the Supreme Court of the State of Washington would deem as coercive any kind of picketing, peaceful or not peaceful. That such an indiscriminate proscription of the right to persuade others and to advertise the facts of a labor dispute violates the guarantee of freedom of speech is evident. This ban on free discussion and persuasion being so broad as to make the exercise of this right impossible in certain situations, generally and vaguely defined, was the evil which this Court struck down in the *Thornhill, Carlson, Swing and Wohl* cases. And this is the evil which is attacked in the instant case. Here, "we are * * * not concerned with picketing en masse or otherwise conducted which might occasion such imminent and aggravated danger * * * as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger". (*Thornhill* v. *State of Alabama,* 310 U. S. 88, 105.) Here we are not concerned, as in the *Meadowmoor* case (312 U. S., p. 292) with picketing "enmeshed with contemporaneously violent conduct," and not, as in the *Giboney* (336 U. S. 490) case with picketing as a means to commit a criminal act in violation of a penal statute; here, we are confronted with a decision which declares as the common law of the State of Washington, that whenever and wherever picketing is conducted by persons other than those directly employed by the employer, it is unlawful—regardless of "the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, * * * the restrained character and the accurateness of the terminology in notifying the public of the facts of the dispute." (*Thornhill* v. *State of Alabama,* 310 U. S. 88, 99.) What we are here dealing with is not a decision narrowly restricting picketing to prevent a supposed evil, but a judgment "based on a common law concept of the most general and undefined nature." (*Cantwell v. Connecticut,*

310 U. S. 296, 308, 60 S. Ct. 900, 84 L. Ed. 1213, 1220, 128 A.L.R. 1352 (1940).)

Hence, it is this broad, general and indiscriminate ban on free communication regarding facts of public interest which is assailed here, and not the power of a state to restrain, even peaceful picketing, in certain narrowly defined situations. A state may not draw the limits of freedom of speech so narrow as to exclude a substantial portion of matters affecting the public interest from the area of free discussion and persuasion. Yet, this was done by the Washington State Supreme Court in the present case. In doing this, the Court centered all its attention upon the supposed coercive effect the picketing might have had upon the employer.

It ignored in this connection the fact that only nine employees out of a total of approximately fifteen had declined to join the Union, and that this refusal was expressed only in a meeting which was presided over by the manager of the hotel, and in which the vote on the issue was proposed and taken also by the manager. The State Supreme Court also ignored the nature of the picketing involved, above all the fact that the picketing was carried out by but one picket only and then merely intermittently and at irregular intervals. A consideration of that type of picketing can lead to only one reasonable conclusion—that the picketing was designed and intended solely for the purpose of informing the public regarding the facts of the existing labor dispute, and for no other purpose. Thus, the Supreme Court of the State of Washington failed to consider and to evaluate the real and most important aspect of picketing—the advertising of a dispute and the attempt on the part of the picketing union to persuade the public to agree with it. It neglected to take into consideration the fundamental basis of

the legality of peaceful picketing, upon which the whole theory of the interrelation of picketing and speech is founded—the supplying of information to the public regarding the facts of a labor dispute, and the appeal to the public. It is by this appeal to the public that the union competes with non-union concerns. "Earning a living is dependent upon securing work; and securing work is dependent upon public favor." (*Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 482, 57 S. Ct. 857, 81 L. Ed. 1229, 1238.) A state cannot outlaw peaceful picketing and, thereby, shut off a union from its right to compete with employers to win public favor for the purpose of securing work for its members, simply because it determines that under its state law no labor dispute is or may be in existence which would allow publication of the facts of such a dispute. "One need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive." (*Bakery & Pastry Drivers and Helpers Local 803 of I. B. T.* v. *Wohl*, 315 U. S. 769, 774, 62 S. Ct. 816, 86 L. Ed. 1178, 1183.) Here as in the *Wohl* case, the state court reasoned that the right to appeal to the public by means of peaceful picketing was lost by the union and that the picketing was coercive because no "labor dispute" existed under the state law, if there were absence of a direct employer-employee relationship. In the *Wohl* case, this Court demonstrated the fallacy of that notion by pointing to the guarantee of free speech which protected the conduct of the workmen.

The protection of freedom of speech finds basis in the Fourteenth Amendment and not in a state statute. The right of freedom of speech does not depend upon "the notion of a particular state regarding the wise limits of an

injunction in an industrial dispute." (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 326.) It does not depend upon an employer-employee relationship.

That the conduct of the Union might have caused some injury to the employer in the present case is not sufficient to deem it coercive. The fact that the picketing affected the employer's business does not make it unlawful. Peaceful picketing like any other mode of speech is designed to influence other persons in their thinking and to induce them to take action in favor of the pleader and in disfavor of the person against whom the speech is directed. If injury results to the person against whom the speech is directed, the damage is an incident to the right of freedom of speech. If such incidental injury were to be taken as a criterion, whether speech is lawful or unlawful, there would hardly be any possibility for exercising that right at all. "The right to form opinion is of little value if such opinion may not be expressed, and the right to express it is of little value if it may not be communicated to those immediately concerned." (*National Labor Relations Board* v. *Ford Motor Co.*, 114 F. 2d 905, 913, *cert. denied* 312 U. S. 689, 61 S. Ct. 621, 85 L. Ed. 1126 (1941).) "It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interests merely on a showing that others may thereby be persuaded to take action inconsistent with its interest." (*Thornhill* v. *State of Alabama*, 310 U. S. 88, 104, 60 S. Ct. 736, 84 L. Ed. 1093,

1103.) Thus, the fact that the activities of a union may be injurious to the employer does not render them unlawful and may not be used by a state to label them as coercive and to use that as a pretext to outlaw them. Yet, this was the way in which the Supreme Court of the State of Washington proceeded in the instant case.

V.

No coercion was exercised upon the employer.

The State Supreme Court—in order to declare the picketing unlawful—labeled it coercive, stating that it was designed to compel the employer to request his men to join the Union. That this declaration was an "insubstantial finding of fact screening reality" (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 292.), is best evidenced by the Court's own statement of facts in its opinion, where it expressly relates that the Union, shortly after June 22, 1946, abandoned its previous proposal and requested the employer to sign a contract under which "the regular employees now working at the hotel shall *not* as a condition of continued employment be required to become members of the union" and that only "new employees who are hired to replace regular employees who have left through normal turnover or discharge shall as a condition of employment become members of the union." This request of the Union is quoted in full by the Court in its opinion, and is set forth in full at page 14 of this brief. Thus, the statement of the Court that the picketing was intended to force the employer to compel his men to join the Union is actually without any foundation, since the picketing continued until July 20, 1946, and no evidence, let alone any finding by the Court, is on record,

that new employees were hired during that time or, if hired, did not wish to become Union members. Hence, the whole theory of the coercion of employees breaks down and cannot be maintained. This becomes even more plausible if the type of picketing is recalled which was employed by the union and which was clearly designed only to inform the public of the facts of a labor dispute. Keeping in mind that factual situation, the conclusion seems obvious that the State Court's determination of coercion was without warrant and, amounted to "a palpable evasion of the constitutional guarantee here invoked." (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 294.) This corroborates the statement previously made in this brief, that the only ground upon which the State Court based its decision that the peaceful picketing involved in this case was unlawful, was the absence of a direct employer-employee relationship. That fact brings the case squarely under the doctrine of the *Swing* case and, therefore, calls for the same final result as was reached by this Court in the *Swing* case.

Once more it should be emphasized in this connection that the intermittent and irregular character of the peaceful picketing involved clearly demonstrates the Union's intent only to reach the public. This was expressly found by the trial judge, on the second trial of the case, when he declared as to the patrons of the hotel, that "they didn't want to be noticed patronizing a place being picketed" (Rec. 172). Thus, there was in this case peaceful picketing alone, with the single intent of notifying the public that the hotel was operating on a non-union basis. The picketing, therefore, was within the principle of freedom of speech established by this Court as protected by the Constitution of the United States.

VI.

The State statute involved gives no weight to the decision of the State Supreme Court.

The Supreme Court of the State of Washington quotes in its opinion (Rec. 15) the declaration of policy of the Washington Labor Disputes Act (Chapter 7, Laws of 1933, Ex. Sess. Rem. Rev. Stat. (Sup.) § 7612-2), which is identical with the Norris La Guardia Act and reads as follows:

> "Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; * * *."

At the end of its opinion, the State Supreme Court says (Rec. 24):

> "We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.) § 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved."

From these words it can be seen that the State Supreme Court reached its conclusion that picketing, in the absence

of a direct employer-employee relationship, is coercive, not only by referring to the common law of the State of Washington, but also by pointing to the public policy declaration of the Washington Labor Disputes Act. Since, however, according to the State Supreme Court's opinion, the public policy statement of the Labor Disputes Act is declaratory of the common law of the State of Washington, the issues are the same under the common law policy of the State and under the State statute—namely, whether a state may, either by legislative enactment, or by court decision, prohibit peaceful picketing, merely because it is carried out by workmen who are not directly employed by the picketed employer.

This Court has treated both situations alike, by declaring that "the scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, *whether those limits be defined by statute or by the judicial organ of the state.* A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him." [Emphasis supplied.] (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 326, 61 S. Ct. 568, 85 L. Ed. 855 [1941].)

Conclusion.

The Supreme Court of the State of Washington has barred resort of workers to peaceful persuasion through picketing in all cases where the disputants do not stand to each other in a direct employer-employee relationship. Such indiscriminate ban on free communication regarding

the facts of a dispute deprives a substantial number of citizens of their right to submit their side of a grievance to the public, to win favor in the public eye for their stand and, by winning public favor, to secure work and the means of livelihood for their group. This Court has held in the *Swing, Wohl* and *Angelos* cases, that the constitutional guarantee of freedom of speech protects the right of workers to state their case and to appeal through peaceful picketing for public support, regardless of the area of immunity defined by state policy. This Court has also held that insubstantial findings of fact by a state court in such situations, will not be allowed to be used as a means to take away that constitutional guarantee.

It is respectfully asked that this Court reaffirm its previous opinions in these matters, especially in view of the fact that certain doubts have arisen within the last two years regarding the constitutional guarantee of free speech in its relation to the legality or illegality of peaceful picketing as defined by the policy of a state.

Respectfully submitted,

DANIEL D. CARMELI,
WALTER F. DODD,
Attorneys for Petitioners.

FRED HERZOG,
Of Counsel.

LIBRARY
SUPREME COURT U.S.

Office - Supreme Court, U. S.
FILED
FEB. 6 1950
CHARLES E. MOR...

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 449

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK.

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

Reply of Petitioners.

DANIEL D. CARMELL,
130 North Wells Street,
Chicago, Illinois,
WALTER F. DODD,
30 North La Salle Street,
Chicago, Illinois,
Attorneys for Petitioners.

FRED HERZOG,
130 North Wells Street, Chicago, Illinois,
Of Counsel.

The Scheffer Press Inc.—FInancial 6-2693

SUBJECT INDEX.

	PAGE
The issue of this Case	1
Respondent's issue	3
Absence of unlawful act	5
The conduct involved in the present case is lawful under the standards established by this Court	15

TABLE OF CASES AND AUTHORITIES.

American Federation of Labor v. Swing, 312 U. S. 321 ..... 2, 4, 7, 15, 18, 19, 20

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 ..... 3, 17

Bakery and Pastry Drivers and Helpers v. Wohl, 315 U. S. 769 ..... 4, 21

Cafeteria Employees Union v. Angelos, 320 U. S. 293 21

Carlson v. California, 310 U. S. 106 4

Case Co. v. N. L. R. B., 321 U. S. 322 3

Giboney v. Empire Storage and Ice Co., 336 U. S. 490 ..... 4, 22, 23

Grosjean v. American Press Co., 297 U. S. 233 6

Lauf v. Shinner, 303 U. S. 323 14

Lovell v. City of Griffin, 303 U. S. 444 6

May Dept. Stores Co. v. N. L. R. B., 326 U. S. 376 3

Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287 9

O'Neil v. Building Service Employees Union, 9 Wash. 2nd, 507 7

Roth v. Local Union, 216 Ind. 363 2

S and W Fine Foods v. Retail Delivery Drivers and Salesmen's Union, 11 Wash. 2d 262 7

PAGE

Schuster v. Int. Asso. 293 Ill. App. 177 12
Senn v. Tile Layers Protective Union, 301 U. S. 468....5, 17
Swing v. American Federation of Labor, 372 Ill. 91 18
Thornhill v. State of Alabama, 310 U. S. 88 .....4, 6, 23
Truax v. Bisbee Local, 19 Ariz. 379 12
White Sulphur Springs Co., 85 N. L. R. B. No. 228 13

OTHER AUTHORITIES.

Norris-LaGuardia Act, 29 U. S. C. A., Sec. 101 et sec 14
United States Code, Title 29, Sec. 158 3
Washington Labor Disputes Act 14

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 449

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK,

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

REPLY OF PETITIONERS.

The Issue of this Case.

There is no basis for disagreement in this case as to the facts and the issue involved. The only claim of error of facts (Brief, p. 7), is that petitioners were in error in saying, on pages 13 and 31 that the hotel's manager was chairman of a meeting, whereas she made the plans for the meeting and acted as chairman of the employees after the withdrawal of representatives of the hotel and of the union. Prior to that she only arranged and attended the meeting, (Tr. 84), which was in part presided over by a union leader as a "semi-chairman" (Tr. 101).

With reference to Respondent's Statement (p. 20) regarding Petitioners' error (p. 28) in saying that *Roth* v. *Local Union,* 216 Ind. 363 (1939) did not refer to freedom of speech, it is sufficient to repeat that the opinion of the Supreme Court of Indiana was directly contrary to the opinion of this Court in the *Swing* case (1941) as to employer-employee relations, and was not based on freedom of speech. Such freedom although referred to is not relied upon in its opinion, and this is stated by Petitioners.

As agreed by respondent, the picketing consisted of a single picket, and "the picketing was entirely peaceful" (Respondent's Brief, p. 9). It was also very irregular in time (Tr. p. 57).

It is also agreed that "picketing for the purpose of compelling an employer or any one else to do an unlawful act is not a lawful exercise of the right of free speech and may be enjoined". (Respondent's Brief, p. 14). An act may be unlawful, whether criminal or civil.

The question at issue, without disagreement, is that as to alleged unlawfulness of picketing to obtain union membership by new employees of the hotel and the representation of all employees by the union (Respondent's Brief, pp. 11, 27, 31). That the absence of an employer-employee relationship between the union and the employer does not create unlawfulness is fully admitted, upon the basis of *A. F. of L.* v. *Swing,* 312 U. S. 321 (1941). (Respondent's Brief, pp. 28-31).

Properly assuming that picketing to compel an unlawful act is not within freedom of speech or of the press (Brief, 28), Respondent contends that picketing in an effort to persuade an employer to unionize his employees is unlawful (Respondent's Brief, 28). This is the only legal issue in this case. It involves every industry and every state, and federal policy as well.

Respondent's Issue.

The issue of the present case as presented by Respondent is that an unlawful objective is shown by the decree enjoining the defendants and each of them "from endeavoring to compel plaintiff to coerce his employees to join the defendant union or to designate defendant union as their representative for collective bargaining", (Respondent's Brief, pp. 30-31), (1) "by picketing," (2) "by boycotting," whether directly or indirectly, (3) "by urging or persuading others to withhold their patronage" or "to refuse to contract, deal with or make deliveries to plaintiff" (Tr. 39).

In support of Respondent's position that an effort of the union to influence the employer with respect to his employees is an unlawful objective, reference is made to the Wagner Act (29 U.S.C.A. sec. 158) with a statement that the State of Washington has come into harmony with national policy. (Respondent's Brief, pp. 16-17).

The policy of the Wagner Act is in favor of, and not in opposition to, organizational activities of unions. Attention may also be called to the fact that Sections 8 (3), 9 (a) and 9 (b) of the Wagner Act find basis in collective bargaining units which may be craft units, and are determined by the National Labor Relations Board. *May Department Stores Company* v. *National Labor Relations Board,* 326 U. S. 376, 380 (1945) (29 U.S.C.A. Secs. 158 (3); 159 (a), 159 (b)). There can be nothing unlawful in a union's determination that employees engaged in the same work should have the same bargaining agent and should be represented by the same craft union. *Case Co.* v. *National Labor Relations Board,* 321 U. S. 322 (1944). The *Tri-City* case (257 U. S. 184) sufficiently establishes extension beyond one shop. The activities of the union here at issue were within federal approval.

Respondent, in his argument that an effort to influence the employer constitutes an unlawful objective, says that the *Swing* case furnishes no precedent in the present case. In that case this Court explicitly said that free communication cannot be denied to the workers "in a dispute with an employer, even though they are not in his employ", and it is true that in that case both the employer and his employees joined together in the same suit. The effort to control both the employer and his employees is more obvious in that case than in this.

The case of *Gibony* v. *Empire Storage & Ice Co.*, 336 U. S. 490 (1949) is relied upon by Respondent (Brief, 32-35). In that case the Court did not disapprove peaceful picketing, but made its validity depend upon the facts of the case.

But free speech properly employed may bring gain or loss; and there is no properly employed peaceful picketing without loss to employer and to labor. Some loss must have occurred although this Court sustained peaceful picketing in *Thornhill* v. *State of Alabama*, 310 U. S. 88 (1940); *Carlson* v. *State of California*, 310 U. S. 106 (1940); *Bakery & Pastry Drivers* v. *Wohl*, 315 U. S. 769 (1942); and *American Federation of Labor* v. *Swing*, 312 U. S. 321 (1941). Similar transactions by employers may and do occasion loss to labor.

Respondent agrees that peaceful picketing may be employed for any lawful objective (Respondent's Brief, p. 31), and this Court, in *American Federation of Labor* v. *Swing*, 312 U. S. 321 (1941), has sustained peaceful picketing directed against an employer and his employees who were united against the union as in the present case.

The sole contention of the Respondent is that it is unlawful for the union to bring pressure upon the employer in order to have him influence his employees to become

associated with the union. A contrary view by this Court is found both in the *Swing* and *Wohl* cases, and in the earlier case of *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468 (1937), this court saying, through Mr. Justice Brandeis, in the *Senn* case, p. 481: "Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial."

Absence of Unlawful Act.

The respondent's argument centers upon the contention that the petitioning union attempted to compel the respondent to coerce his men to join the union, that such coercion was unlawful, and, consequently, that the picketing, employed by the union was illegal, since it was designed to attain an unlawful end. This contention is fallacious because it attempts to reach the desired conclusion of unlawfulness upon the basis of two non-existent, yet indispensable, premises. First, the request of the union that the respondent pay his employees union wages and recognize the union as the collective bargaining agent of his employees was a lawful and not an unlawful labor objective, according to the decisions of this Court; and second, peaceful picketing to attain a legitimate labor objective is lawful. Moreover, the respondent's contention fails to mention and to take into account the most important, decisive and, actually, the only purpose for which the picketing was carried out—the informing of the public of the existence of a labor dispute.

The respondent argues that each state has the right to declare certain conduct unlawful; that the State of Washington has done so in the present case with respect to the objectives sought by the union; that the picketing was only a means to reach the objective declared unlawful by the

State of Washington and, therefore, that the picketing could be rightfully enjoined. The seeming simplicity of this argument is misleading. If freedom and liberties, guaranteed by the Federal Constitution, are involved, a state does not possess the unrestricted right, at its pleasure and discretion, to declare any conduct unlawful, regardless of whether constitutionally protected liberties are there abridged or not. It may declare conduct unlawful only if such declaration does not conflict with constitutionally guaranteed rights. Thus, much of the constitutional history of the United States is filled with cases dealing with the extent to which states may go in declaring conduct unlawful without infringing upon constitutional liberties. *Thornhill* v. *State of Alabama,* 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940), in which a statute forbade the loitering about the premises or place of business of any other person; *Lovell* v. *City of Griffin,* 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949 (1938), where a statute prohibited the distribution of handbills without a permit; *Grosjean* v. *American Press Co.,* 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936), where a statute imposed a license tax upon publications engaged in selling advertising space, are but a few examples, taken at random from a multitude of cases, where states had attempted to declare conduct unlawful, yet had run afoul federal constitutional guarantees.

In the instant case, too, it is asserted that the State of Washington had the right to declare the petitioners' conduct unlawful. The respondent declares emphatically (Resp. Brief p. 23) that he never contended "that picketing in the absence of an employer-employee relationship is unlawful *per se,* nor does he contend that picketing for the purpose of unionization is necessarily subject to injunction". But, he contends that the only conduct which the injunction

sought to prohibit in the instant case was conduct of the union attempting to compel respondent to coerce his employees.

Apart from the fact that only the State Supreme Court's opinion is controlling, and not the individual statements of the respondent, the decisive point remains that the State Supreme Court deemed the picketing in the instant case coercive only because of the lack of a direct employer-employee relationship between the picketing union men and the respondent. This is most clearly demonstrated by the fact that the Court expressly overruled two previous decisions rendered by it (*O'Neil* v. *Building Service Employees International Union, Local No. 6,* 9 Wash. 2d 507, 115 P. 2d 662 (1941), and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers Union, Local No. 353,* 11 Wash. 2d 262, 118 P. 2d 962 (1941)), which had declared, in accordance with the case of *American Federation of Labor* v. *Swing,* 312 U. S. 321, that peaceful picketing, regardless of the absence of a direct employer-employee dispute, could not be deemed coercive but was protected by the right of freedom of speech, whatever the common law or the provisions of an anti-injunction act of a state might be. This is particularly well brought out in the *S and W Fine Foods* case, where the State Supreme Court stated the issue of the case as follows:

> "In the case at bar, the principal question presented is whether the right to peacefully picket the plant of an employer is protected by the first and fourteenth amendments to the Federal constitution, *where there is no employer-employee relationship existing between the employer picketed and the members of the union involved in the controversy.*" (Emphasis supplied).

If these two cases, which were based solely upon the question of legality of union activities in the absence of a direct employer-employee relationship, had no bearing

upon the present case, why was it necessary for the State Supreme Court to expressly overrule them? The answer to this question is, of course, obvious. Both these cases had recognized that lack of a direct employer-employee relationship did not authorize a state to consider activities of an outside union directed against an employer as coercive and unlawful.

The fact that only the absence of a direct employer-employee relationship prompted the State Supreme Court to declare the union conduct coercive, is also corroborated by a reading of the State Supreme Court's opinion. Such reading will reveal an analysis by the State Supreme Court of all decisions in labor cases rendered by it since 1935, the analysis being based upon the sole criterion whether in the various cases reviewed a direct employer-employee relationship was in existence or not. Why this emphasis upon the employer-employee relationship, if it had no bearing upon the present case, as the respondent asserts?

Keeping these factors in mind, it is clear that this Court is presented with exactly the same situation as in the *Swing* case—the assertion of a state that it has the right to outlaw peaceful picketing by union men who are not employed by the employer against whom the picketing is directed. In the *Swing* case this Court declared that "such a ban of free communication is inconsistent with the guarantee of freedom of speech." It is respectfully submitted that the same result should be reached in the present case.

There is another important factor which shows that absence of the direct employer-employee relationship was the only reason which motivated the Supreme Court of the State of Washington to call the union conduct coercive—the facts in the instant case did not warrant a finding of coercion. It is true that this Court will, in general, not make an independent valuation of the facts of a case as

found by a state court. However, this Court will deviate from that principle if the determination of the facts by a state court is of such a nature as to be "without warrant" so as to amount to "a palpable evasion" of constitutional guarantees. ". . . it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality." *(Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies,* 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200). Hence, a look at the facts viewed under the aspect of eventual coercion is warranted.

When the union submitted its first proposal for an agreement, the respondent declined to accept it. No understanding could be reached in the ensuing period. When a majority of nine employees out of a number of eleven who participated in a meeting [the total number of employees being fifteen] decided in a vote taken by the manager of the hotel not to join the union, the union members began to picket respondent's place peacefully and intermittently. *It might be mentioned in this connection with respect to the averred neutrality of the respondent, that the vote of the employees whether they desired to join the union or not, was taken by the hotel manager, who showed her "impartiality" by telling the union representatives to get off the hotel premises: (Record 85).* Two days after the picketing had begun, a labor conciliator from the Washington State Department of Labor and Industries called a meeting of the parties to effect a settlement. (Rec. 106). The union representative discussed working conditions, wages, and sick leave provisions, yet the respondent's representative avoided any questions in this respect and was intentionally vague without submitting any counter-proposal to the union. (Rec.

106). It was finally agreed that respondent's representative would take up the matter again with the respondent and give an answer within five days (Rec. 107). In accordance with that agreement, the respondent's attorney wrote a letter to the union (Exh. E, Rec. 107), in which he declared respondent's willingness to continue negotiations with the union, but declined to sign the type of contract as proposed by the union, which would in his opinion force the employees to join the union. The letter concluded with the following statement, directed to the union: "If you have any other type of contract which would not force such a result, we will be glad to include such other form of contract in our negotiations looking to a satisfactory solution". The union, thereupon, in reliance upon respondent's statement worked out a new proposal which provided that, in compliance with respondent's wishes, existing employees should not be required to become union members, that only new employees should join the union, but that wages, hours and working conditions of union employees should be applied to non-union employees (Rec. 14). Respondent's answer to the new proposal was not a continuation of negotiations as promised in his letter, but a suit for an injunction and damages. (Rec. 1; 26). Not only this, but at the trial respondent claimed that he knew nothing of the union's proposal. (Rec. 77).

If these facts are kept in mind, it is hardly conceivable how the State Supreme Court could arrive at the conclusion that the union conduct was coercive, unless that conclusion was based upon the absence of a direct employer-employee relationship which made the picketing, in the State Supreme Court's opinion, coercive *per se*. The facts demonstrate clearly a complete absence of any coercion whatsoever. They show that collective bargaining negotiations were carried on by the parties, and that the union was primarily

interested not in the acquisition of new members but in the payment of adequate wages to employees who performed the same type of work as union men did in the same locality; in other words the union attempted to reach a uniform wage rate to be paid for the same type of work to union workers and non-union workers alike, so as to prevent the depressive effect of lower wage rates upon the higher wage scales paid to union members. That this was the primary purpose of the union activities in the instant case is best evidenced by the fact that from the very beginning, at the meeting called by the state conciliator, the union wanted to discuss only wages and working conditions with the respondent, but was thwarted therein by the stubborn refusal of respondent's representative to do so. (Rec. 106).

The low wages paid by the respondent to his employees were hurting the union members. (Rec. 113). The respondent paid to his employees 55 cents an hour or $26 for a forty-eight hour work week (Rec. 112). Wherever union members went to find employment, the low wage rates paid by respondent were held against them. (Rec. 112). Union members, previously employed with the housing authority were paid 85 cents an hour, had a forty-hour work week and were paid time and one-half for overtime and holidays, and received paid vacations and sick leave. They had to take jobs at much lower pay rates, and inferior working conditions were forced upon them by the fact that respondent paid only 50 or 55 cents an hour to his employees, had a forty-eight hour work week, and no provisions for overtime, paid vacations and sick-leave. (Rec. 112).

Later on, when the union submitted the new proposal, it dropped any request that existing employees should join the union, but demanded that the *same wages should be paid to union and non-union employees alike* and that the

union be the bargaining agent for both. As said before, it is hardly understandable that under these conditions the picketing by the union should be branded as coercive and designed to force the respondent to compel his employees to join the union. A realization of these facts will show the obvious and apparent purpose for which the union was picketing the respondent's place of business;—that purpose was to inform the public that respondent's hotel was a business enterprise which refused to pay union wages to its employees, that the working conditions of union members were gravely injured by respondent's practices and that union members or persons sympathetic to the cause of union men should take notice of these facts. What the respondent really complained of was not any coercion which the union supposedly exercised upon him, but the publicity which he received. He wanted the courts to help him to keep the facts of a labor dispute and especially of his inferior working conditions secret so that union members should frequent his place—union members who, if they knew the truth, might not patronize his place. Yet, there is "no legal right to force the union to keep the facts (of a labor dispute) secret." (Cunningham, J., in *Truax* v. *Bisbee Local No. 380,* 19 Ariz. 379, 389, 171 P. 121, 125 (1918)).

The following words spoken by the Illinois Appellate Court in *Schuster* v. *Int. Association of Machinists,* 293 Ill. App. 177, 193, 194 (1937) fit perfectly the present case:

> "While plaintiff complains about the presence of the pickets that alternated in front of his place of business, his real complaint unquestionably is against the publicity given by the signs carried by them proclaiming the truth as to the *unfairness* of his attitude toward organized labor. He persists in his refusal to deal with a labor union and yet he resents as an infringement of his rights, the disclosure by that union to the public, including members of labor unions and their

sympathizers, of his antagonism to organized labor. His position, that, notwithstanding his antagonism to the union, the law must silence the voice of organized labor lest he may suffer any ill consequences as a result of his attitude, is untenable. It is, of course, his right and privilege to refuse to deal with the union and to operate a non-union shop, but, in our opinion, it is just as much the right and privilege of the union, when he so refuses, to publish the fact that it regards him as unfair to it. What inalienable right has an employer who is unfair in the eyes of organized labor to the favor of the continued patronage of its members and friends?''

The respondent places reliance upon the National Labor Relations Act and declares that the State of Washington has adopted the federal labor policy. That statement is plainly incorrect, since no labor relations act providing for a regulated process of collective bargaining has been adopted and is in existence in the State of Washington. Decisions rendered under the National Labor Relations Act have no bearing upon the present case. Besides, the opinion of the State Supreme Court made no such claim as set forth by the respondent, and in no way relied upon the National Labor Relations Act. It should also be pointed out that the National Labor Relations Act cannot find application in the present case, since the business to which the dispute pertained was not an enterprise where any labor dispute would affect interstate commerce, the National Labor Relations Board having persistently refused to assert jurisdiction over hotels. (See *Matter of White Sulphur Springs Company*, 85 N. L. R. B. No. 228.)

Besides, neither party ever contended that Gazzam's business was subject to the National Labor Relations Act; therefore decisions based on that statute are inapplicable to the case at bar.

Respondent's claim that the policy adopted by the Washington State Supreme Court is the same as the federal policy is also incorrect in other ways. The State Supreme Court based, in the present case, its decision partly upon the public policy statement of the Washington Labor Disputes Act and declared that this statement prohibits any picketing of a business by a union which has no members among the employees of the picketed employer. It is interesting to note that the Washington Labor Disputes Act, whose policy statement was thus interpreted by the State Supreme Court, is completely identical with the Norris-LaGuardia Act. Both acts contain the same definition of the term "labor dispute." In both acts the term "labor dispute" includes "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, *regardless of whether or not the disputants stand in the proximate relation of employer and employee*" (emphasis supplied). Rem. Rev. Stat. Sec. 7612-13. The State Supreme Court ignored in its opinion the positive command of the Act, that it is not necessary for a labor dispute under the Act, that the disputants stand in the proximate relation of employer and employee to each other.

This Court, in interpreting the public policy statement of the Norris-LaGuardia Act has reached just the contrary result as was reached by the State Supreme Court. Thus, in *Lauf* v. *E. G. Shinner & Co.*, 303 U. S. 323, 58 S. Ct. 578, 82 L. Ed. 872 (1938), an outside union had made demand upon the employer to require its employees, as a condition of their continued employment, to become union members; when this demand was refused, the union began to picket the employer's plant. This Court reversed

the injunction decree of the lower court and declared with respect to the public policy statement as follows:

> "The Court of Appeals erred in holding that the declarations of policy in the Norris-LaGuardia Act and the Wisconsin Labor Code to the effect that employees are to have full freedom of association, self-organization, and designation of representative of their own choosing, free from interference, restraint, or coercion of their employers, put this case outside the scope of both acts, since respondent cannot accede to the petitioners' demands upon it without disregarding the policy declared by the statutes * * *. *We find nothing in the declarations of policy which narrows the definition of labor dispute as found in the statutes. The rights of the parties* and the jurisdiction of the federal courts *are to be determined according to the express provisions applicable to labor disputes as so defined.*" (Emphasis supplied.)

The conduct involved in the present case is lawful under the standards established by this court.

The respondent admits in his brief, upon the basis of *American Federation of Labor* v. *Swing*, 312 U. S. 321 (1941), that picketing in the absence of a direct employer-employee relationship between union members and employer does not create unlawfulness. Since, however, the State Supreme Court based the alleged unlawfulness of the union's conduct upon the absence of a direct employer-employee relationship (Rec. 15, 16, 21, 23), respondent's admission actually disposes of his entire argument and thereby of the case. Yet, the respondent claims that the State Supreme Court rested its decision not upon the absence of a direct employer-employee relationship but upon the alleged attempt of the union "to compel respondent to coerce his men" (Resp. Brief, p. 23) to join the

union. To support his argument, respondent points to the State Court's decree which enjoins the defendants and each of them "from endeavoring to compel plaintiff to coerce his employees to join the defendant union or to designate defendant union as their representative for collective bargaining" (Resp. Brief, pp. 30-31). Respondent claims that a differentiation must be made between picketing for unionization and picketing to compel an employer to force his men to join the union.

Respondent is silent as to how such a differentiation could be made; but an analysis of the decree in this case will reveal that no line of demarkation is drawn between these two types of picketing. The plain fact is that, under the Court's decree, whatever types of picketing were to be carried out by the union would be in violation of the decree. The respondent could say in each and every instance of picketing that it was designed to coerce him to force his employees to join the union. It is not the form of the decree which is controlling but the substance—the effect of the decree; and the effect of the present decree is such as to impose upon the union as unlimited a restraint upon picketing, and thereby upon freedom of speech, as was imposed by the Illinois Supreme Court in the *Swing* case. Any type of peaceful communication is prohibited under this decree, particularly if those provisions of the decree are kept in mind which prohibit the union to coerce the employer "*by urging and persuading* others to withhold their patronage from the plaintiff * * *." (Emphasis supplied.) (Rec. 39.) But justifiable conduct by a union cannot be turned into coercion by labeling it as such. The fact that the picketing and the attendant publicity is designed to influence the respondent in his attitude is a far cry from coercion. Publicity is always designed to influence people, but that does not make it coercive; neither

oes it become coercive by calling it so. If an eventual ss or gain which might follow every peaceful communi-tion, were to be made the criterion, as to whether a com-unication is lawful or unlawful, then indeed the right of eedom of speech could be destroyed at the will of the arty against whom the speech is directed. This Court as repeatedly declared that the influence which a union ttempts to exercise upon an employer through the at-nding publicity of picketing, cannot be deemed coercive nd, thereby, unlawful. Thus, in *Senn* v. *Tile Layers Pro-ctive Union, Local No. 5*, 301 U. S. 468 (1937), 57 S. Ct. 57, 81 L. Ed. 1229, where a union demanded that Senn, n employer, as well as his employees should join the nion and Senn as well as his employees refused to do so, e ensuing picketing was held lawful, this Court saying:

> "The sole purpose of the picketing was to acquaint the public with the facts and, by gaining its support, *to induce Senn to unionize his shop. There was no effort to induce Senn to do an unlawful thing.* There was no violence, no force was applied, no molestation or interference, *no coercion.* There was only the persuasion incident to publicity.
>
> "The unions acted, and had the right to act as they did, to protect the interests of their members against the harmful effect upon them of Senn's action. Compare *American Steel Foundries* v. *Tri-City Central Trades Council, supra,* 257 U. S. 184, 208, 209, 42 S. Ct. 72, 78, 66 L. Ed. 189, 27 A. L. R. 360. *Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial.*" (Emphasis supplied.)

It should be noted that the alleged "coercion" which as exercised by the union upon the employer in the *Senn* se was by far greater than the averred "compulsion" the present case. In the *Senn* case the union requested

Senn to sign an agreement which provided not only that all of his employees should become union members but also that he himself should join the union. Failing to do so, he would be barred from performing work with his own hands. The picketing of the union was held not coercive. In the instant case the union engaged in negotiations with the employer and requested ultimately only that union wages should be paid to the employees, and that the union should be the bargaining agent (Rec. 14-15). When the employer refused to agree upon even a single point with the union, it commenced to picket the place. Surely, such picketing cannot be held coercive.

In the case of *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568, 83 L. Ed. 855 (1941), the facts as stated in the opinion of the Illinois State Supreme Court (*Swing* v. *American Federation of Labor*, 372 Ill. 91, 92, 93, 22 N. E. (2d) 857) are characteristic, and warrant restating. Officials of the Hairdressers Union called upon Swing, an employer, and

> "* * * demanded that he require all of his employees to join that union, to which none of them belonged, and to which none of them wished to belong. Swing took a neutral position in the matter, permitted the agents to mingle with his employees, and permitted the employees to do as they pleased. The plaintiffs all agree that there was not then and has not since been any labor difficulty or dispute; the employees were and are satisfied with wages, hours and working conditions. Notwithstanding these satisfactory conditions and obvious harmony among the plaintiffs, the place of business where they all obtained a livelihood was beset by pickets. * * * It is also charged and admitted that all of these pickets were strangers to the employer, that none of them were either past or prospective employees in the place of business and that the entire proceeding was designed and intended

to force the employer to force his employees to join that particular union, or in the alternative suffer a destruction of his business, with a consequent loss of employment means of livelihood to all of the plaintiffs. The Appellate Court succinctly states: The question presented for determination is whether a labor union, in which none of its members are present, past or expectant employees of an employer, has a right to picket his place of business for the purpose of compelling the employees, who do not wish to join a union, to do so."

Those are the facts as stated by the Illinois Supreme Court in the *Swing* case. The decision which the Illinois Supreme Court rendered, based upon the facts as found by it, is well known; it affirmed the injunctive decree of the Illinois Appellate Court. In doing so, it declared (372 Ill. 96):

"We have before us in this case an effort by force to deprive all of the plaintiffs of their means of livelihood and compel them to exist on terms prescribed by others without lawful authority to prescribe them."

From these facts it is clear that the Illinois Supreme Court rested its decision solely *upon the alleged coercion* in which the union engaged when it picketed Swing's place of business and requested him to have his men join the union, and he and his employees declined to do so and combined in a suit against the union.

This court did not recognize the union conduct in the *Swing* case as coercive, but reversed the decision of the Illinois Supreme Court stating that "such a ban of free communication is inconsistent with the guarantee of freedom of speech."

The respondent tries in his brief to obviate the apparent legal consequences of the *Swing* case upon his argument by stating that there was in the *Swing* case no union

activity to coerce the employer to violate a state statute and that the *Swing* case, therefore, does not lend any weight to petitioners' point of view. It is, of course, completely immaterial whether a state court bases its decision upon an alleged violation of the common law of a state or a state statute; if such a decision, however arrived at, infringes upon constitutionally guaranteed rights, it is invalid and will be reversed by this Court, and it does not make any difference, whether it was based upon a statute or the common law. Moreover, the responden forgets that the Washington State Supreme Court declared in the present case just as the Illinois Supreme Court did in the *Swing* case, that the union's conduct was coercive and violated the common law of the state and that the public policy statement of the Washington Anti-Injunction Act was only declaratory of the common law. However, the best answer to respondent's argument was provided by this Court in the *Swing* case itself, when it said:

> "The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state." (312 U. S. 326.)

The respondent also attempts to distinguish the *Swing* case from the present one by contending that Gazzam, contrary to Swing, was a completely innocent and neutral bystander and that "a state court injunction to prevent damage to the business of this law-abiding, innocent and neutral bystander, cannot be deemed a violation of any union right protected by the federal constitution" (Resp. Brief, p. 29). The facts in this case show that Gazzam was neither innocent nor neutral, but tried by all means at his disposal to keep the union out of his place. As mentioned before, the gist of his complaint is not the dispute, but the publicity which he received through the dispute.

This Court reiterated its previous stand in the case of *Bakery and Pastry Drivers and Helpers Local 802 of I. B. T.* v. *Wohl*, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 (1942), to the effect that peaceful picketing by a union, designed to bring some pressure upon an employer, is not coercive and is, therefore, lawful. In the *Wohl* case, the union picketed the suppliers of peddlers of bakery goods for the purpose of inducing the suppliers to abandon the peddler system or, at least, to induce the peddlers to become union members and thereby to work only six days a week and to hire a union helper. This Court in reversing the injunctive decree of a New York state court, recognized that the picketing engaged in by the union was protected by the right of freedom of speech, and did not consider the pressure which was exerted by the union on the employer as coercion.

In *Cafeteria Employees Union, Local 302, et al.* v. *Angelos, et al.*, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58 (1943), this Court had to determine the legality of peaceful picketing which was carried out by members of a union against owners of a cafeteria who conducted the business by themselves without the aid of any employees. The picketing by the union obviously was designed to influence the cafeteria owners by the pressure of publicity, to employ union members to do the job which was performed by the proprietors themselves. This Court reversed the decision of the New York State Court and declared the picketing as being protected by the right of freedom of speech. Obviously, the picketing was not deemed coercive.

All of the above cases, decided by this Court, demonstrate clearly that the peaceful pressure of publicity, brought by a union to bear upon an employer to influence him in his attitude with respect to demands of the

union pertaining to wages and working conditions, will not be deemed coercive but will be protected by this Court under the guarantee of freedom of speech.

The respondent relies heavily upon the case of *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 69 S. Ct. 684, 93 L. Ed. 649 (1949). That case, however, does not help respondent's argument. In the *Giboney* case the picketing employed by the union was part and parcel of a "single and integrated course of conduct" designed and engaged in to violate a valid, existing, criminal statute. The protection of peaceful picketing as a means of communication under the right of freedom of speech was not disapproved of but expressly upheld; only the use of picketing in the particular case as a means "to violate valid laws designed to protect important interests of society" was condemned. In the present case the picketing was not part and parcel of an integrated scheme to violate a valid state law; it was standing alone—isolated from any unlawful scheme. It was carried out for the sole purpose of informing the public of a labor dispute.

In the *Giboney* case, the union men "were doing more than exercising a right of free speech or press." In the present case, the union was exercising only these rights and nothing more. No law "designed to protect important interests of society" was violated in the instant case —just the contrary. The most important interests of society demand the granting of a very broad scope to the right of freedom of speech. Contrary to the *Giboney* case, the conduct of the union in the present case was not directed against and injurious to the interests of the whole public, but, at best, was merely annoying to the respondent. Yet, "states cannot consistently with our Constitution abridge * * * [the] freedoms [of speech and press] to obviate slight inconveniences or annoyances. *Schneider*

v. *State*, 308 U. S. 147, 162; 60 S. Ct. 146, 151, 84 L. Ed. 155." (*Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490; 69 S. Ct. 684, 93 L. Ed.)

As mentioned repeatedly, this Court has declared that efforts by a union to enlarge the membership of its organization are directed towards a lawful objective, and that peaceful picketing designed to spread information among the public with respect to that objective is protected by the right of freedom of speech. Important interests of the public demand such a dissemination of information." It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society." (*Thornhill* v. *State of Alabama*, 310 U. S. 88 (1940).)

Respectfully submitted,

DANIEL D. CARMELL,
WALTER F. DODD,
Attorneys for Petitioners.

FRED HERZOG,
Of Counsel.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
JAN 27 1950
CHARLES ELMORE CROPLEY
CLERK

In the

Supreme Court of the United States

OCTOBER TERM, A.D. 1949

No. 449

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER and E. W. HOLBROOK, *Petitioners*,

vs.

W. L. GAZZAM, *Respondent*.

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF RESPONDENT

ALFRED J. SCHWEPPE,
657 Colman Building,
Seattle 4, Washington.

MERRILL WALLACE,
304 Medical and Dental Building,
Bremerton, Washington.
Attorneys for Respondent.

THE ARGUS PRESS, SEATTLE

In the

Supreme Court of the United States

OCTOBER TERM, A.D. 1949

No. 449

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER and E. W. HOLBROOK, *Petitioners*,

vs.

W. L. GAZZAM, *Respondent*.

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF RESPONDENT

ALFRED J. SCHWEPPE,
657 Colman Building,
Seattle 4, Washington.

MERRILL WALLACE,
304 Medical and Dental Building,
Bremerton, Washington.
Attorneys for Respondent.

THE ARGUS PRESS, SEATTLE

INDEX

	Page
The Opinions of the Court Below	1
Statement of the Case	2
Counter-Statement of the Questions Presented	13
Summary of Argument	14
Argument	15
I. It is unlawful in the State of Washington for an employer to interfere with, restrain or coerce his employees with reference to union affiliation or choice of bargaining representatives	15
II. Picketing to compel an employer to do an unlawful act is not within the protection of the First Amendment and Fourteenth Amendment of the Constitution of the United States	28
Conclusion	37

TABLE OF CASES

A. F. of L. v. Swing (1941) 312 U.S. 321, 61 S. Ct. 568, 85 L. Ed. 855	29, 30, 31
Bakery Drivers Local v. Wohl (1942) 315 U.S. 769, 62 S. Ct. 816, 86 L. Ed. 1178	31
Bruce v. Tobin, 245 U.S. 18, 38 S. Ct. 7, 62 L. Ed. 123	2
Building Service Employees Int. Union Local 262, et al. v. Gazzam, 29 Wn.(2d) 488, 188 P.(2d) 97; 29 Wn.(2d) 501, 188 P.(2d) 104; 29 Wn.(2d) 501, 502, 188 P.(2d) 104; 29 Wn.(2d) 502, 188 P.(2d) 97	1, 23
Gazzam v. Building Service Employees, Etc., 29 Wn.(2d) 488, 188 P.(2d) 97, pet. reh. den. 29 Wn.(2d) 502, 134 Wash. Dec. 34, 207 P.(2d) 699, pet. reh. den. 134 Wash. Dec. 541	2
Carlson v. California (1940) 310 U.S. 106, 60 S. Ct. 746, 84 L. Ed. 1104	28

Page

Carpenters Union v. Ritter's Cafe (1942) 315 U.S. 722, 62 S. Ct. 807, 86 L. Ed. 1143 32

Consolidated Turnpike Co. v. Norfolk etc. R. Co., 228 U.S. 596, 33 S. Ct. 605, 57 L. Ed. 982 14

Equitable Life Ass. Co. v. Brown, 187 U.S. 308, 23 S. Ct. 123, 47 L. Ed. 190 14

Giboney v. Empire Storage & Ice Co. (1949) 366 U.S. 490, 69 S. Ct. 684, 93 L. Ed. 649 ..... 14, 32

Honeyman v. Hanan, 300 U.S. 14, 57 S. Ct. 350, 81 L. Ed. 476 14

Milk Wagon Drivers Union v. Meadowmoor Dairies (1941) 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200 32

Milwaukee Pub. Co. v. Burleson, 255 U.S. 407, 41 S. Ct. 352, 65 L. Ed. 704 28

National Labor Relations Board v. National Casket Co. (CCA 2, 1939) 107 F.2d 992 18

National Labor Relations Board v. William Davies Co. (CCA 7, 1943) 135 F.2d 179; Cert. den. 320 U.S. 770, 64 S. Ct. 82, 88 L. Ed. 460 18

Park & Tilford Imp. Corp. v. International Broth., Etc., (1946) 27 Cal.(2d) 599, 165 P.(2d) 891 24

Peters v. Central Labor Council (1946) 179 Ore. 1, 169 P.(2d) 870 23

Republic Gas Co. v. Oklahoma, 334 U.S. 62, 68 S. Ct. 972, 92 L. Ed. 1212 2

R. H. White Co. v. Murphy (1942) 310 Mass. 510, 38 N.E.(2d) 685 35

Roth v. Local Union No. 1460 of Retail Clerks Union (1939) 216 Ind. 363, 24 N.E.(2d) 280 ..... 20, 21, 22

Safeway Stores v. Retail Clerks' Union Local No. 148 (1935) 184 Wash. 322, 51 P.(2d) 372 19

Page

Silkworth et al. v. Local 575 of A. F. of L. (1944) 309 Mich. 746, 16 N.W.(2d) 145 19

Senn v. Tile Layers Union (1937) 301 U.S. 468, 57 S. Ct. 857, 81 L. Ed. 1229 ..... 28, 32

Thornhill v. Alabama (1940) 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 ..... 28, 33

United Brotherhood of Carpenters v. Sperry (CCA 10, 1948) 170 F.2d 863 35

Wilbank v. Chester & Delaware Counties B.H. & R.E.U. (1948) 360 Pa. 48, 60 A.(2d) 21; cert. den. 336 U.S. 945, 69 S. Ct. 812, 93 L. Ed. 713 ..... 25, 26

TEXTBOOKS

59 Harv. L. Rev. 1123 24

Restatement of Torts, §794, §796 27

STATUTES

Laws of Washington 1933, Ex. sess., Ch. 7, §2 15

Norris-LaGuardia Act, 47 Stat. 70, Title 29 U.S.C. 102 16

Rem. Rev. Stat., 1940 Supp., §7612-2 ..... 15, 18, 20, 21, 26, 27

29 U.S.C. §102 16

29 U.S.C. §157 16

29 U.S.C. §158 16

29 U.S.C. §159(a) 17

CONSTITUTION

United States, Constitution—

First Amendment 13, 28

Fourteenth Amendment 13, 28

In the

Supreme Court of the United States

OCTOBER TERM, A.D. 1949

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER and E. W. HOLBROOK,	*Petitioners,*	No. 449
vs.		
W. L. GAZZAM,	*Respondent.*	

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF RESPONDENT

THE OPINIONS OF THE COURT BELOW

The opinion of the majority of the Supreme Court of the State of Washington on the first appeal reversing the judgment of the trial court (which had granted a motion for nonsuit at the close of the respondent's case and had dismissed the action for damages and injunction) and instructing the trial court to proceed with the trial in accordance with the views expressed in the opinion was entered December 22, 1947, and is reported in 29 Wn.(2d) 488, 188 P.(2d) 97, followed by a concurring opinion, 29 Wn.(2d) 501, 188 P.(2d) 104, and two dissenting opinions, 29 Wn.(2d) 501, 502, 188 P.(2d) 104. Petition for rehearing was denied March 26, 1948, 29 Wn.(2d) 502, 188 P.(2d) 97. These opinions appear at pp. 12-25

of the Record. This decision on the first appeal did not result in a final judgment reviewable here. *Republic Gas Co. v. Oklahoma*, 334 U.S. 62, 68, 68 S. Ct. 972, 92 L. Ed. 1212; *Bruce v. Tobin*, 245 U.S. 18, 19, 38 S. Ct. 7, 62 L. Ed. 123.

The opinion of the Supreme Court of the State of Washington on the second appeal affirming the judgment of the trial court which granted an injunction and awarded damages to the respondent was entered July 1, 1949, and is reported in 134 Wash. Dec. 34, 207 P.(2d) 699. Petition for rehearing was denied August 12, 1949, 134 Wash. Dec. 541, 207 P.(2d) 699. This opinion appears at page 40 of the Record.

STATEMENT OF THE CASE

The respondent, W. L. Gazzam, is an octogenarian (R. 58) who, since June, 1925, has been the sole proprietor of the Enetai Inn, a hotel in Bremerton, Washington (R. 51, 52). The Enetai Inn has 100 rooms in the hotel proper and seven cottages on the waterfront behind the hotel. Both types of accommodations are principally occupied by transients.

In May of 1946, Mr. Gazzam employed about fifteen persons—an engineer, janitor, two bell boys, seven maids, desk clerks, and clerk-housekeeper (R. 52-53). None of these employees was a member of any union (except that Mrs. Stapleton, respondent's desk clerk and housekeeper was or had been a member of a "hotel union" in San Francisco, R. 88). Union men were frequently employed by respondent for construction work, and, in former years when the Enetai Inn maintained a restaurant, union personnel was employed therein. Since the beginning of

the late war, no restaurant has been operated in connection with the hotel (R. 53).

In May of 1946 and at the time of trial, no hotel in Bremerton had been organized by any union (R. 71, 112). Contrary to the statement made on page 13 of Petitioners' Brief, the petitioning union had organized and represented *no* other hotel employees in their collective bargaining dealings with the respective employers. Petitioner Morganson testified "We have no hotel in Bremerton, organized" (R. 112).

Shortly before the first of May, 1946, the petitioners Morganson and Meyer called upon the respondent and asked him to sign a contract with the petitioning union. After stating that union membership was a matter for his employees to decide, the respondent told the petitioners he was going to Los Angeles for a short trip and that in his absence, he "would be delighted to give them the run of the house * * *" (R. 54).

Immediately upon respondent's return from Los Angeles the petitioner Meyer came to see him and said they were waiting for respondent to sign up. In response to respondent's inquiry, petitioner Meyer stated that no applications for union membership had been signed by the employees. As Meyer was leaving, respondent again told him the decision was entirely up to the employees (R. 54).

On May 2, petitioner Morganson prepared and filed with the Bremerton Central Labor Council a complaint against the Enetai Inn. This complaint was in the form of a letter addressed to E. W. Holbrook,

secretary of the Council and was admitted in evidence as defendant's Exhibit No. 3 (R. 97-98). This complaint spoke of the petitioning union's effort to negotiate a contract with respondent. The contract referred to was one which would have required respondent to fire all employees of the Enetai Inn who would not join the petitioning union (R. 98).

On May 2, 1946, respondent received a letter from the Central Labor Council of Bremerton over the signature of petitioner E. W. Holbrook, which letter was quoted in the opinion of the Supreme Court of Washington as follows:

> "This Counsil has been requested by Building Service Employees Local No. 262 to place your hotel on the 'We do not patronize' list.
>
> "Before acceding to a request of this kind, it is the policy of the Council to call a meeting of both parties and attempt to arrange a settlement; accordingly such a meeting has been called for Tuesday, May 7th, at 7:30 P.M. in the office of the Council, upstairs in the old city dock.
>
> "Please be present or have a representative attend, as failure to attend will be construed to mean that you do not wish to bargain collectively with Organized Labor." (Ex. A, R. 13, 55, 157)

In response to this letter, respondent directed his attorney, Mr. Turner (now Judge of the Superior Court of the State of Washington) to represent him at the meeting scheduled for May 7, and Mr. Turner did so. Respondent did not attend in person.

Replying to questions propounded by respondent's attorney, Mr. Turner, petitioner Morganson described

the discussion which took place at this May 7th meeting in part as follows:

"Q. You stated in your statement that you had attempted to organize the Enetai Inn and get Mr. Gazzam to sign this contract and he had refused?

A. Correct.

Q. Then I was called upon to make a statement and I asked you whether it was not the fact that you had been given full opportunity to persuade the employees to join the union and you admitted you had?

A. I did not deny it.

Q. You admitted you were told you could see the employees? You did see the employees and you had no evidence that Mr. Gazzam had hindered you? I believe that was the form of your admission?

A. Yes.

Q. And that you had obtained no signatures from the employees of the hotel, asking for admission to membership into the union?

A. Yes.

Q. And I took the position that so far as wages were concerned, they were not in issue at that time because the union did not represent any of Mr. Gazzam's employees, and so far as the employees, themselves, were concerned, they were satisfied with their present terms of employment?

A. Our position was on the wages and hours. That was our position. And that is why we were interested in organizing the place.

Q. From then on, the rest of the debate was confined to whether or not Mr. Gazzam should be compelled to sign or should not be compelled to

sign a contract which would have the effect of making his employees choose whether they would join the union or be discharged?

A. At that date, yes.

Q. And I took the position that that would be coercion, under the state law, and that the employer should not be asked to coerce his employees? That is the position I took at that meeting?

A. Yes." (R. 99-100)

At the suggestion of the president of the Central Labor Council the parties agreed that representatives of the petitioning union should meet with respondent's employees at the Enetai Inn on May 10th, and talk to them altogether. It was also agreed that respondent would not be expected to attend that meeting and tell the employees he intended to sign up (R. 100).

Around 2:00 p.m., in the afternoon of May 10, the meeting at the Enetai Inn got under way (R. 101). Eleven of respondent's employees were present (R. 85), as were six representatives of the petitioning union and the Central Labor Council, and Mr. Turner (R. 101).

Mr. Turner opened the meeting by stating that the purpose of the meeting was to make it possible for representatives of the union to address the employees in a body, and that respondent was expressing no opinion one way or the other (R. 101). He introduced the union representatives to the employees (R. 84) and then Mr. Norman, president of the Central Labor Council took over and presided as long as the non-employees were present (R. 101).

On pages 13 and 31 of their brief the petitioners state that this meeting was held under the chairmanship of the hotel's manager. The statement is not accurate. From the record it appears that there was no permanent chairman. The meeting was opened by Mr. Turner who stated the object and introduced the petitioner's representatives; then the president of the Central Labor Council took the chair (R. 101). Respondent, the sole manager of the hotel, was not present (R. 90, 84).

Following Mr. Norman's assumption of the chair, petitioners Meyer, Holbrook (R. 101-102) and Morganson (R. 84) addressed the employees and explained to them the advantages of union membership (R. 84, 101, 102). Questions were invited, but none were asked (R. 85, 102). No one at the meeting spoke against the union (R. 85).

At the conclusion of the speeches by petitioners, when no questions were forthcoming, Mr. Turner and the representatives of the union and the Central Labor Council withdrew, leaving the employees alone to vote (R. 85, 102). Mrs. Stapleton, employed by respondent as desk clerk and housekeeper, and the only one of respondent's employees who was a member of organized labor, was chosen to preside (R. 70, 78, 88, 85). Mrs. Stapleton described the voting and the result as follows:

> "* * * Then they all went upstairs and I was sort of elected for chairman or speaker,—speaker in charge. And I asked anyone who wanted to join the union to raise his hand. One raised his hand,—a bell boy and janitor. One of the maids

didn't know whether she did or not. She wanted to talk it over with her husband. I went upstairs,—

"I asked for anyone who did not want to join to hold up his hand. They all held up their hands that they didn't—except these two. And I think there was eleven of us present. One said he wanted to join. One was undecided. And the rest said, 'No.' I went upstairs and reported the way it happened to you and the other gentlemen and resumed by duties as usual. * * *" (R. 85)

Mrs. Stapleton herself cast no vote. The only vote cast in favor of union membership was cast by a bell-boy, and apparently the petitioners did not desire his membership. On cross-examination petitioners' counsel interrogated Mrs. Stapleton as follows:

"Q. You indicated that the bell boy or bell boys voted.

A. Yes.

Q. Did you know that the defendant union had no desire to include that work under their contract?

A. No, I didn't but they talked to them.

Q. Did you know that all the union desired to have included in their contract, so that they could be the subject of collective bargaining, would be just the jobs of the maids?

A. It was my impression that they wanted the bell boys, too, because the bell boys were assisting the janitor. You mean to say you only wanted the maids and not the janitor?

Q. You didn't know about that?" (R. 92)

The record does not show that the bell-boy was ever admitted to membership.

Without further negotiations (R. 102) on May 29th, the respondent received a letter from the Central Labor Council over the signature of E. W. Holbrook which read as follows:

> "By action of the Central Labor Council, in regular meeting, Monday, May 27th, your hotel, the Enetai Inn, was placed on the 'We do not patronize' list." (Ex. B, R. 13, 56)

On May 29 or 31, 1946, the petitioning union began to picket respondent's hotel (R. 103, 57, 78). The picketing consisted of a single picket, carrying a sandwich sign, patrolling in front of the hotel. The sign bore the legend in front and back: "Enetai Inn —unfair to organized labor," and the signature of the petitioning union (R. 57). The picketing was entirely peaceful.

On June 1st, a labor conciliator from the State Department of Labor and Industries called a meeting of the parties which was attended by petitioners Holbrook, Morganson, Meyer and Mr. John C. Merkel, then attorney for the petitioning union, all representing the petitioning union, and by respondent's attorney. The parties maintained their respective positions substantially the same as at the hearing before the Central Labor Council on May 7th, the petitioners still insisting on a contract which would force the employees into the union (R. 106, 166). It was then agreed that respondent's attorney would again consult respondent to see whether he would consider signing a contract, and would advise Mr. Merkel of respondent's answer within five days, and that in the

meantime petitioners would withdraw the pickets (R. 107).

The pickets were then withdrawn (R. 105).

In accordance with this arrangement, respondent's attorney, Mr. Turner, wrote to petitioners' then attorney, Mr. Merkel, as follows:

"Mr. John C. Merkel
Attorney-at-Law
Harrison Building
Bremerton, Washington

June 4, 1946

"Dear Sir:

"Mr. Gazzam has authorized me to say that we are willing to continue negotiations with the representatives of Building Service Employees Local No. 262 for the purpose of reaching some satisfactory solution to the present controversy other than entering into a contract of the type which Mr. Meyers and yourself have thus far proposed. Mr. Gazzam is unwilling to negotiate with the Union concerning such a contract for the reason that this type of contract, as you, Mr. Meyers, and Mr. Morganson have all explained it, would force all the employees of the Enetai Inn to choose between joining the Union and being discharged, and these employees have already expressed their wish not to join this Union.

"If you have any other type of contract which would not force such a result, we will be glad to include such other form of contract in our negotiations looking to a satisfactory solution.

Cordially yours,

(Signed) THEODORE S. TURNER."

(Ex. E, R. 107)

The only reply to this letter was the prompt replacement of the pickets (R. 107-108, 167).

About June 22, 1946, the petitioners submitted a new proposal to respondent which provided:

> "It is agreed by both parties hereto that the regular employees now working at the hotel shall not as a condition of continued employment be required to become members of the union. It is further agreed that any new employees who are hired to replace regular employees who have left through normal turnover or discharge shall as a condition of employment become members of the union. New employees shall be required to become members of the union within fifteen days after employment. It is understood that the employer shall have the voluntary right to either call the union for new employees or hire anyone whom he desires the only factor being that a condition of employment of new employees shall be that they come into the union within fifteen days. *It is also agreed that the union shall be the bargaining agent for both Union and non-union employees and that any wages hours and working conditions established for Union employees shall be paid also to non-union employees.*" (Ex. I, R. 14-15, 74, 110) (Emphasis supplied)

The picketing continued until July 20, 1946 (R. 67).

This action for an injunction and damages was begun June 29, 1946 (R. 1), the respondent alleging that petitioners were endeavoring to force him wrongfully and unlawfully to coerce his employees to join the petitioning union (R. 2-3).

The Enetai Inn remained on the "unfair list" until the time of the trial, October 22, 1946 (R. 43, 108).

At the conclusion of the second trial, the court entered a decree, the pertinent portion of which reads as follows:

"NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS, to wit:

"1. That the plaintiff do have and recover judgment against the defendants, and each of them, for damages for the wrongful picketing alleged in plaintiff's complaint in the sum of Five Hundred Dollars ($500.00) together with his costs and disbursements herein to be taxed, except as to defendant Holbrook, who is hereby dismissed;

"2. The defendants, and each of them, are hereby restrained and enjoined from endeavoring to compel plaintiff to coerce his employees to join the defendant union or to designate defendant union as their representative for collective bargaining, by picketing the hotel premises of plaintiff, *viz.*, the Enetai Inn, Bremerton, Washington, by boycotting plaintiff or the said Enetai Inn in any manner whatsoever, whether directly or indirectly, and by urging and persuading others to withhold their patronage from the plaintiff and said Enetai Inn or to refuse to contract, deal with or make deliveries to plaintiff or to said Enetai Inn.

"DONE IN OPEN COURT this 20 day of September, 1948.

H. G. SUTTON, Judge." (R. 39)

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

To approach this case with the candor to which it is entitled, respondent hastens to answer "The Questions Presented," itemized on page 8 of the petition for certiorari. Obviously, each of the four questions there propounded must be answered in the negative. However, negative answers to each of the four questions fail to dispose of this case or even touch upon the only issue, to-wit: Does the following injunction deprive petitioners of any rights guaranteed them by the First and Fourteenth Amendments to the Constitution of the United States?

> "2. The defendants, and each of them, are hereby restrained and *enjoined from endeavoring to compel plaintiff to coerce his employees to join the defendant union or to designate defendant union as their representative for collective bargaining*, by picketing the hotel premises of plaintiff, *viz.*, the Enetai Inn, Bremerton, Washington, by boycotting plaintiff or the said Enetai Inn in any manner whatsoever, either directly or indirectly, and by urging and persuading others to withhold their patronage from the plaintiff and said Enetai Inn or to refuse to contract, deal with or make deliveries to plaintiff or to said Enetai Inn." (Emphasis supplied)

The two subsidiary questions are:

1. Is it unlawful in the State of Washington for an employer to coerce his employees into joining or not joining a particular labor organization?
2. Is picketing for the purpose of compelling an employer to coerce his employees into joining or not joining a particular labor organization a proper exercise of the right of free speech?

SUMMARY OF ARGUMENT

The order under review (R. 39) entered below after the first appeal and affirmed by the Supreme Court of Washington on the second appeal (R. 40, 41) was narrowly and precisely drawn so as to enjoin the petitioners only from pursuing an unlawful object, namely, compelling respondent to coerce his employees with reference to union affiliation and representation, in violation of state law. The state law specifically provides that an employee shall be free from interference, restraint, or coercion by his employer, in the designation of bargaining representatives. Such coercion of his employees by an employer is illegal, not only in the State of Washington but in most other states of the Union, and is also contrary to federal law.

Picketing for the purpose of compelling an employer or anyone else to do an unlawful act is not a lawful exercise of the right of free speech and may be enjoined. *Giboney v. Empire Storage & Ice Co.* (1949) 336 U.S. 490, 69 S. Ct. 684, 93 L. Ed. 649. This point is so clearly disposed of by the unanimous decision of this court in the case just cited as hardly to leave a substantial federal question, *Equitable Life Ass. Co. v. Brown*, 187 U.S. 308, 311, 23 S. Ct. 123, 47 L. Ed. 190; *Consolidated Turnpike Co. v. Norfolk etc. R. Co.*, 228 U.S. 596, 600, 33 S. Ct. 605, 57 L. Ed. 982; *Honeyman v. Hanan*, 300 U.S. 14, 23, 57 S. Ct. 350, 81 L. Ed. 476.

ARGUMENT

I.

It is unlawful in the State of Washington for an employer to interfere with, restrain or coerce his employees with reference to union affiliation or choice of bargaining representatives.

Section 2 of Chapter 7 of the Laws of Washington, 1933, Extraordinary Session (Rem. Rev. Stat., 1940 Supp. §7612-2) provides in part:

> "* * * the public policy of the State of Washington is hereby declared as follows:
>
> "Whereas, Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, *though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor,* or their agents, *in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;* * * *." (Emphasis supplied)

Although no contention has been made that respondent or his employees were engaged in interstate

commerce, and no application has been made to a lower federal court for relief by either party, it is of interest to note that the wording of the above-quoted Washington statute is identical with wording of the Norris-LaGuardia Act, 47 Stat. 70, Title 29 U.S.C. 102.

Three years after the passage of the Norris-LaGuardia Act, Congress passed the Wagner Act, which made it an unfair labor practice for an employer:

> "(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title."
>
> "(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in sections 151-166 of this title or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in sections 151-166 of this title as an unfair labor practice) to require as a condition of employment membership therein, *if such labor organization is the representative of the employees as provided in section* 159(a) *of this title*, in the appropriate collective bargaining unit covered by such agreement when made." (29 U.S.C.A. §158. Emphasis supplied)

The rights of employees protected by section 157 are:

> "* * * Employees shall have the right to self-organization, to form, join, or assist labor organ-

izations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." (29 U.S.C.A. §157)

Section 159 (a) provides:

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; * * *" (29 U.S.C.A. §159(a))

Thus the policy of the State of Washington was and is in complete harmony with national policy, although Washington has never enacted a Labor Relations Act.

Interpreting the above-quoted sections of the Wagner Act, the Circuit Court of Appeals for the Second Circuit held in *National Labor Relations Board v. National Casket Co.* (1939) 107 F.2d 992:

"* * * As we read the section it means that an employer may not require an applicant for work, as a condition to accepting him for employment, to join or to resign from a union, nor insert in the contract of employment any other discriminatory term that encourages or discourages membership in a labor organization, excepting only that, if the facts stated in the proviso exist, the employer may require membership in the labor organization which has been legally chosen to represent his employees. * * *" (p. 997)

Again, the Court of Appeals for the Seventh Circuit stated in *National Labor Relations Board v. William Davies Co.* (1943) 135 F.2d 179, Cert. den. 320 U.S. 770, 64 S. Ct. 82, 88 L. Ed. 460, at page 181:

> "* * * It seems to be necessary to emphasize again that the question of organization by the employees for the purpose of collective bagaining is the exclusive business and concern of the employees. It is the mandate of the statute that the employer shall not intrude himself into the picture. The slightest interference, intimidation or coercion by the employer of the employees in the rights guaranteed to the employees by the statute constitutes an unfair labor practice in violation of Section 8(1) of the Act. ***"

The Washington statute above quoted provides that the employees "shall be free from interference, restraint, or coercion of employers of labor" (Rem. Rev. Stat., 1940 Supp., §7612-2) in the designations of their representatives. In the instant case the petitioners were trying to force the respondent, first, to agree that those of his employees who would not join the petitioning union be discharged (R. 98) and later, to agree that any new employees should join the petitioning union as a condition of continuing employment, and to recognize the petitioning union as the bargaining agent for *all* of his employees (R. 14) although intensive solicitation had resulted in no applications for union membership (R. 54) and the employees had voted overwhelmingly against union affiliation (R. 85).

The Supreme Court of Washington has held picketing for the purpose of compelling an employer to coerce his employees with reference to union affilia-

tion unlawful not only in the instant case, but in *Safeway Stores v. Retail Clerks' Union, Local No.* 148 (1935) 184 Wash. 322, 51 P.(2d) 372. In the latter case the majority of the court asked this salient question:

> "* * * What right have the respondents to insist or demand, at the threat or cost of the destruction of appellant's business, or at all, that appellant ask, urge or coerce, directly or indirectly, its employees, who are at liberty to do as they please, to join respondents' organization? * * *." (p. 338)

That the answer to this question is that no such right exists is amply demonstrated not only by the decisions of the Supreme Court of Washington interpreting Washington law, but also by the decisions of the highest courts of other states interpreting the statute or common law of their respective jurisdictions.

Michigan has no statute analogous to the Norris-LaGuardia Act. Yet the Supreme Court of Michigan held in *Silkworth et al. v. Local* 575 *of A. F. of L.* (1944) 309 Mich. 746, 16 N.W.(2d) 145:

> "Therefore, in the present case we must determine whether or not defendants' picketing of plaintiffs' storage plant was for the purpose of obtaining a lawful labor objective. The motive for the picketing, that is, the result sought to be accomplished, was a question of fact. The testimony is convincing that defendants' real objective was to compel plaintiffs to put their drivers in defendant union by paying their initiation fees, regardless of whether or not the drivers wished to join. *This was not a lawful labor objective.* Defendants could not use the lawful means of

peaceful picketing to accomplish such unlawful purpose.

"To hold with defendants' contention, under the facts and circumstances shown by the record, would provide a way whereby employers could be coercively compelled to pay union initiation fees for their employees, regardless of whether or not the employees wished to join the union. Such a course would not be in the furtherance of legitimate union aims and activities, nor would it be for the best interests of unions or employees.

"We confine our holding in the present case to the point that defendants could not use the lawful means of peaceful picketing to accomplish their unlawful objective. However, our decision should not be construed as in any way limiting or restraining peaceful picketing in the accomplishment of a lawful labor objective." (p. 150) (Emphasis supplied)

The Supreme Court of Indiana, in *Roth v. Local Union No.* 1460 *of Retail Clerks Union* (1939) 216 Ind. 363, 24 N.E.(2d) 280, discussed the effect of a state statute identical with Rem. Rev. Stat. 1940 Supp. §7612-2, quoted above. Before proceeding with the pertinent quotations from this important case, it is necessary to correct a misstatement occurring on page 28 of petitioners' brief. On page 28 of their brief, petitioners refer to the *Roth* case as one which "without even mentioning the right of freedom of speech, held picketing coercive if there was no direct employer-employee relationship involved." As a matter of fact, the first question discussed by the court, after stating the facts, was the question of freedom of speech. The Indiana court said:

"Prior to the enactment of any statute upon the subject in this state, this court recognized, under the principles of the common law, the right to picket in controversies between an employer and his employees, where there was no resort to force, threats, intimidation or other unlawful means. *Karges Furniture Co. v. Amalgamated, etc., Union*, 1905, 165 Ind. 421, 75 N.E. 877, 2 L.R.A., N.S. 788, 6 Ann. Cas. 829. This right, when lawfully used, has been declared to be a proper exercise of free speech and peaceable assemblage and the right to use the public streets and highways * * *." (p. 282)

The Indiana court stated the facts to be the following:

"The facts are not here in dispute. The court found from the evidence (which is not before us) that the plaintiff had performed all obligations imposed upon him by law; that he was at peace with his employees; that none of them belonged or wanted to belong to the picketing union; *and that the object of the picketing complained of was to compel the plaintiff, against his desire, to sign a closed shop contract, whereby his employees would be compelled to join the union against their will or be discharged, which, as we have already pointed out, the plaintiff was prohibited from doing by p sitive law.* Under these circumstances, the picketing was wrongful and oppressive and it ought to have been enjoined." (p. 283) (Emphasis supplied)

Interpreting the Indiana statute which is identical with Rem. Rev. Stat. 1940 Supp. §7612-2, the court said:

"To ascertain the intent of the legislative body that enacted a statute is the fundamental rule

for its judicial construction. When the purpose of an act is expressed in clear and unambiguous terms, this must be accepted as the solemn declaration of the sovereign. The public policy of the state is a matter for the determination of the Legislature and not for the courts. The statute here under consideration declares that it is the public policy of this state that the individual unorganized worker shall be free to decline to associate with his fellows and that he shall be free from interference, restraint, or coercion on the part of his employer. This must mean that no labor union may demand that an employer require his employee to join such union, because no employer has the right to require an employee to join or refrain from joining a labor union. *Any person or group which undertakes to coerce an employer to do that which is contrary to the express public policy of this state thereby undertakes to compel the performance of an unlawful act.* The lawful weapon of peaceful picketing may not be utilized to accomplish such an unlawful purpose. It is quite immaterial that the things done to bring about the unlawful purpose were not per se unlawful. This is our interpretation of our statute." (pp. 282-283) (Emphasis supplied)

After quoting the above language and more from the *Roth* case, the Supreme Court of Washington in the instant case said:

"Our act and that of Indiana are identical; the facts in each case are alike. The reasoning and conclusions of the supreme court of Indiana are unanswerable. We adopt them as quoted above.

"We hold that the acts of respondents, in so far as the picketing was concerned, were coercive

—first, because they violated the provisions of Rem. Rev. Stat. (Supp.) §7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved." *Gazzam v. Building Service Etc.*, 29 Wn. (2d) 488, at p. 500 (R. 23-24)

Petitioners seek to becloud the issues in this case by implying that all peaceful picketing in the absence of an employer-employee relationship or for the purpose of unionizing a non-union place of business was enjoined by the Washington court. To set the matter straight, respondent wishes to point out that he has never contended and does not now contend that picketing in the absence of an employer-employee relationship is unlawful *per se*, nor does he contend that picketing for the purpose of unionization is necessarily subject to injunction. *The only injunction sought or granted in this case was against trying to compel respondent to coerce his employees* (R. 9, 39).

The distinction between picketing to compel the employer to coerce his employees into joining a union, and picketing for unionization was recognized by the Supreme Court of Oregon in *Peters v. Central Labor Council* (1946) 179 Ore. I, 169 P.(2d) 870, where the Oregon court observed at page 875:

"We have said that under the facts of this case *it would be unlawful to picket for the purpose of coercing plaintiffs to sign the 'closed shop' agreement.* It does not follow, however, that the union could not picket for the unionization of the plant even though none of its members were employees therein, as that is, according to the overwhelming weight of authority, a legal labor objective * * *." (Emphasis supplied)

The Oregon court pointed out that for the employer to sign a closed shop agreement with a union to which a majority of his employees did not belong or wish to join would constitute an unfair labor practice, and picketing to induce that result was held unlawful.

A similar result was reached in *Park & Tilford Imp. Corp. v. International Broth., Etc.* (1946) 27 Cal. (2d) 599, 165 P.(2d) 891. The Supreme Court of California held:

> "Since defendants, in connection with their concerted activities, made unlawful demands that plaintiff sign a closed shop contract and coerce its employees to join defendant unions, it was permissible for the trial court to enjoin defendants from making such demands. The judgment is therefore modified by limiting the injunction to the enjoining of defendants from making demands in connection with their concerted activities that plaintiff sign a closed shop contract with defendants or coerce its employees to join defendant unions so long as they do not represent the requisite majority of plaintiff's employees * * *." (p. 900)

It will be noted that in the case at bar the injunction runs against nothing but the effort of the union to compel the respondent to coerce his employees.

Commenting on the *Park & Tilford* case, the note writer in 59 Harv. L. Rev. 1123 concludes at pages 1127-1128:

> "Although other courts have not been so scrupulous in separating the lawful from the unlawful, the conclusion seems warranted that outside-union action directed at employees is not likely to be enjoined, *whereas an injunction will usually be*

granted if the union seeks to reach the employees through pressure on the employer. This may seem inconsistent with the cases in the rival-union situation which have upheld action directed at a union through the employer in the absence of certification. Applying the balance-of-interests theory, the distinction seems sound. Where the employees are themselves members of a union, their ability to protect their own interests is considerably greater that when they act as individuals, and there is consequently less public interest in preventing persuasion from becoming coercion through enforced pressure from the employer. However, where possible, the action directed at the employer should be severed from that directed at the employees and the solution of the *Park & Tilford* case adopted." (Emphasis supplied)

A recent case dealing with a set of facts closely analogous with the facts in the instant case is *Wilbank v. Chester & Delaware Counties B.H. & R.E.U.* (1948) 360 Pa. 48, 60 A.(2d) 21, in which the union picketed a hotel. The facts are stated in the opinion:

"The plaintiffs conduct a hotel, restaurant and tap room with fourteen employees. There was no controversy between plaintiffs and their employes. A majority of them were not members of a labor union and did not wish to become members. The plaintiffs had no objection to any of their employes joining any union and offered no objection to defendants' effort to persuade them to join a union. Defendant union did not represent any of plaintiffs' employes. In April or May, 1947, the defendant, Roco Locantore, the defendant union's business agent, submitted to plaintiffs for execution a form of contract to

> govern plaintiffs' relations with their employes and requiring plaintiffs to employ only union employes; Locantore informed plaintiffs that if they did not execute the contract picketing would result. Plaintiffs, desiring not to coerce their employes declined to comply with Locantore's request and the picketing followed as threatened. * * *." (p. 22)

Although the picketing appears to have been attended with some disorder, the court did not mention such disorders in affirming an injunction. Pennsylvania had a statute making it an unfair labor practice for an employer to interfere with, restrain or coerce employes in the exercise of the rights guaranteed by the Labor Relations Act. (The Washington statute provides that an employee shall "be free from interference, restraint, or coercion of employers of labor" in the designation of his representatives for collective bargaining, Rem. Rev. Stat., 1940 Supp. §7612-2). The Supreme Court of Pennsylvania held:

> "Defendants' purpose in picketing was to require plaintiffs to force their employes to join the union or to discharge them and employ others who are members of the union. Such a purpose is clearly unlawful and subject to restraint * * *." (p. 23)

This court denied certiorari, 336 U.S. 945, 69 S. Ct. 812, 93 L. ed. 713.

Petitioners argue that when the second form of contract quoted herein at page 11 was presented to respondent, any effort to compel the respondent to coerce his employees was abandoned (Brief of Petitioners, p. 34). The picketing of respondent's place of

business began either May 29th or 31st, 1946 (R. 57, 78, 103). The petitioners were still insisting that respondent sign a contract which would force his employees, willy-nilly, into union membership (R. 106, 166). On June 22, 1946, the petitioners tendered the form of contract which they assert removed all taint of illegality (R. 74, 110). The last sentence of the new proposed clause read as follows:

> "* * * *It is also agreed that the union shall be the bargaining agent for both Union and non-union employees and that any wages hours and working conditions established for Union employees shall be paid also to the non-union employees.*" (R. 14-15)

The employees were still not to be free to select their own representatives as provided in Rem. Rev. Stat. 1940 Supp. §7612-2. The respondent was still expected to force them into union representation. The picketing continued until July 20, 1946 (R. 67).

The Restatement of Torts, §794 and §796, succinctly summarizes respondent's contention on this point:

> "§794. OBJECT PROHIBITED BY LAW.
>
> "An act by an employer which would be a crime or a violation of a legislative enactment or contrary to defined public policy is not a proper object of concerted action against him by workers."
>
> "§796. COMBINATION OF OBJECTS.
>
> "When workers engage in concerted action against an employer for more than one object and one or more of the objects are improper, their action is not for a proper object so long as they insist on the improper objects."

a proximate relation of employees and employer), and that appellants are entitled in this case to relief by injunction against the threat of such peaceful picketing or persuasion by appellees.' * * *.

"'* * * On its face the permanent injunction in that decree rested on the explicit avowal that 'peaceful persuasion' was forbidden in this case because those who were enjoined were not in Swing's employ * * *.'" (p. 324)

This court went on to hold:

"'* * * it would be improper to dispose of the case otherwise than on the face of the decree, which is the judgment now under review * * *.

"'* * * We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guarantee of freedom of speech. * * *." (p. 325)

In the instant case also, "it would be improper to dispose of the case otherwise than on the face of the decree, which is the judgment now under review."

Let us again look at this decree. The enjoining portion provides:

"2. The defendants, and each of them, are hereby restrained and *enjoined from endeavoring to compel plaintiff to coerce his employees to join the defendant union or to designate defendant union as their representative for collective bargaining*, by picketing the hotel premises of plain-

> tiff, *viz.*, the Enetai Inn, Bremerton, Washington, by boycotting plaintiff or the said Enetai Inn in any manner, whatsoever, whether directly or indirectly, and by urging and persuading others to withhold their patronage from the plaintiff and said Enetai Inn or to refuse to contract, deal with or make deliveries to plaintiff or to said Enetai Inn." (R. 39) (Emphasis supplied)

Thus the furtherance of an unlawful objective is the only thing enjoined, and peaceful picketing for any lawful objective is not hampered by the decree. The absence of an employer-employee relationship is not even mentioned. In the case at bar an employer-employee relationship is immaterial to the issues.

For example, suppose the picketing had all been done by the single one of respondent's employees who voted for union affiliation. If the object of the picketing remained the same, namely to compel respondent to coerce his employees into joining the petitioning union or recognizing it as their bargaining agent against their expressed wishes, the picketing would still be for an unlawful objective and enjoinable.

Thus *A.F. of L. v. Swing* (1941) 312 U.S. 321, 61 S. Ct. 568, 85 L. ed. 855, furnishes no precedent in the instant case, where it is not picketing *per se* that has been enjoined, but solely the furtherance of an unlawful objective by any means whatever.

Petitioners place considerable reliance also on the case of *Bakery Drivers Local v. Wohl* (1942) 315 U.S. 769, 62 S. Ct. 816, 86 L. ed. 1178, in which a union picketed two bakery peddlers to compel them to employ a relief man one day a week and pay him union wages.

"It is contended that the injunction against picketing adjacent to Empire's place of business is an unconstitutional abridgment of free speech because the picketers were attempting peacefully to publicize truthful facts about a labor dispute. See *Thornhill v. Alabama*, 310 U.S. 88, 102, and *Allen Bradley Co. v. Union*, 325 U.S. 797, 807, note 12. But the record here does not permit this publicizing to be treated in isolation. For according to the pleadings, the evidence, the findings, and the argument of the appellants, the sole immediate object of the publicizing adjacent to the premises of Empire, as well as the other activities of the appellants and their allies, was to compel Empire to agree to stop selling ice to nonunion peddlers. Thus all of appellants' activities—their powerful transportation combination, their patrolling, their formation of a picket line warning union men not to cross at the peril of their union membership, their publicizing—constituted a single and integrated course of conduct, which was in violation of Missouri's valid law. In this situation, the injunction did no more than enjoin an offense against Missouri law, a felony.

"It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now. * * *." (pp. 497-498)

"* * * No opinions relied on by petitioners assert a constitutional right in picketers to take advantage of speech or press to violate valid laws designed to protect important interests of society.

"We think the circumstances here and the

II.

Picketing to compel an employer to do an unlawful act is not within the protection of the First Amendment and Fourteenth Amendment of the Constitution of the United States.

This court stated in *Milwaukee Pub. Co. v. Burleson*, 255 U.S. 407, 41 S. Ct. 352, 65 L. ed. 704:

> "* * * Freedom of the press may protect criticism and agitation for modification or repeal of laws, but it does not extend to protection of him who counsels and encourages the violation of the law as it exists." (p. 414)

In *Senn v. Tile Layers Union* (1937) 301 U.S. 468, 57 S. Ct. 857, 81 L. Ed. 1229, this court upheld the constitutionality of the certain provisions of the Wisconsin Labor Code which authorized peaceful picketing and held that picketing to induce an employer to agree to refrain from engaging in manual labor was picketing for a lawful objective. After pointing out that freedom of speech is guaranteed by the Federal Constitution (p. 478), this court observed at page 480:

> "There was no effort to induce Senn to do an unlawful thing."

The cases of *Carlson v. California* (1940) 310 U.S. 106, 60 S. Ct. 746, 84 L. ed. 1104, and *Thornhill v. Alabama* (1940) 310 U.S. 88, 60 S. Ct. 736, 84 L. ed. 1093, held sweeping legislative enactments banning, in effect, all picketing, to be unconstitutional. Respondent has no quarrel with these decisions, which are in no way in point in this case.

As we understand it, petitioners place their princi-

pal reliance upon *A.F. of L. v. Swing* (1941) 312 U.S. 321, 61 S. Ct. 568, 85 L. Ed. 855. This case held that a decree in equity prohibiting all peaceful picketing in the absence of an employer-employee relationship deprived the picketing union of the guarantee of freedom of speech. Obviously, this decision furnishes no guidance in the case at bar. There was in that case no union activity to coerce the employer to violate a state statute. Moreover, where, as in the case at bar, the employer Gazzam was a completely innocent and neutral bystander, as the state court found, and as the state and federal law required him to be, a state court injunction to prevent damage to the business of this law-abiding, innocent and neutral bystander, cannot be deemed a violation of any union right protected by the federal constitution. While the foregoing observation is not necessary from our point of view to uphold the specific and narrow state court order under attack here, we make it because of petitioner's emphasis on the *Swing* case, which we do not deem in point for the reasons stated.

In the *Swing* case, the Illinois court entered a decree described by this court as follows:

> "* * * Thereupon, although as we have seen issue had been formally joined on the claims of libel and violence, the appellate court, by a procedure unrevealed by the record and without opinion, entered a permanent injunction ranging from peaceful persuasion to acts of violence. The decree recited 'that this Court and the Supreme Court of this State have held in this case, that, under the law of this State, peaceful picketing or peaceful persuasion are unlawful when conducted by strangers to the employer (*i.e.*, where there is not

While the lower courts made no findings as to whether this object was lawful or unlawful, there does not appear to be anything illegal about hiring a relief man or paying him union wages. In fact, the *Wohl* case seems closely analogous to *Senn v. Tile Layers Protective Union* (1937) 301 U.S. 468, 57 S. Ct. 857, 81 L. ed. 1229, although the *Senn* case is not mentioned in the opinion. The lower courts held that there was no labor dispute and for this reason granted an injunction. This court held that the absence of a labor dispute did not warrant an injunction against free communication. The court, at page 775, did point out:

> "* * *. A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual * * *."

and this court has consistently held that a state is not required to tolerate picketing which is attended by violence, *Milk Wagon Drivers Union v. Meadowmoor Dairies* (1941) 312 U.S. 287, 61 S. Ct. 552, 85 L. ed. 836, 132 A.L.R. 1200, or is in furtherance of an unlawful objective, *Carpenters Union v. Ritter's Cafe* (1942) 315 U.S. 722, 62 S. Ct. 807, 86 L. ed. 1143, *Giboney v. Empire Storage & Ice Co.* (1949) 336 U.S. 490, 69 S. Ct. 684, 93 L. ed. 649.

Respondent submits that the last cited case is controlling in the case at bar. In the *Gibony* case the union picketed for the purpose of compelling the company to agree to stop selling ice to non-union peddlers. Such an agreement was illegal under Missouri law. The Missouri court granted an injunction which this court affirmed. The argument advanced by the union in that case was the same as is advanced in the case at bar. This court unanimously said:

reasons advanced by the Missouri courts justify restraint of the picketing which was done in violation of Missouri's valid law for the sole immediate purpose of continuing a violation of law. In holding this, we are mindful of the essential importance to our society of a vigilant protection of freedom of speech and press. *Bridges v. California*, 314 U.S. 252, 263. States cannot consistently with our Constitution abridge those freedoms to obviate slight inconveniences or annoyances. *Schneider v. State*, 308 U.S. 147, 162. But placards used as an essential and inseparable part of a grave offense against an important public law cannot immunize that unlawful conduct from state control. *Virginia Electric Co. v. Board*, 319 U.S. 533, 539; *Thomas v. Collins*, 323 U.S. 516, 536, 537, 538, 539-540. Nor can we say that the publication here should not have been restrained because of the possibility of separating the picketing conduct into illegal and legal parts. *Thomas v. Collins*, supra, at 547. For the placards were to effectuate the purposes of an unlawful combination, and their sole, unlawful immediate objective was to induce Empire to violate the Missouri law by acquiescing in unlawful demands to agree not to sell ice to nonunion peddlers. It is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgment of freedom of speech or press to mak a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed. See *e.g.*, *Fox v. Washington*, 236 U.S. 273, 277; *Chaplinsky v. New Hampshire*, 315 U.S. 568. Such an expansive interpre-

> tation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society." (pp. 501-502)

Likewise the United States Court of Appeals for the Tenth Circuit held in *United Brotherhood of Carpenters v. Sperry* (1948) 170 F.(2d) 863, that the use of "we do not patronize" lists, is not protected by constitutional guarantees of freedom of speech and press when such lists are used for an unlawful purpose.

The state courts have held that injunctions against picketing for an unlawful purpose do not deprive the picketing unions of freedom of speech. In *R. H. White Co. v. Murphy* (1942) 310 Mass. 510, 38 N.E.(2d) 685, the Supreme Judicial Court of Massachusetts said:

> "The defendants have relied largely upon *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.ed. 1093, *Carlson v. California*, 310 U.S. 106, 60 S.Ct. 746, 84 L.ed. 1104, and *American Federation of Labor v. Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.ed. 855, in support of their contention that peaceful picketing though for an unlawful purpose is not itself unlawful, and may not be enjoined. We do not adopt this view, being of opinion that there is nothing in those cases to support the proposition that freedom of speech includes the right, by picketing, to persuade or induce an employer to violate the statute by engaging in an unfair labor practice, and thus to set at naught the declared public policy of

the Commonwealth, the foundation of the statute itself. In none of these cases just referred to was the picketing carried on for an unlawful purpose. * * * We are of opinion that none of the cases relied upon by the defendants, which we have already discussed, is authority for any principle that picketing by workmen in concert to persuade or induce an employer to do an unlawful act, one condemned by statute as an unfair labor practice and contrary to the defined public policy of the Commonwealth and of the nation, is permissible under the constitutional guaranty of freedom of speech, or otherwise. * * *." (pp. 690-691)

"* * * We are of opinion that the constitutional guaranty of freedom of speech does not include a right by workmen to picket the premises of an employer to persuade or induce action by him and that would be in violation of a defined public policy of the Commonwealth, a public policy the same as that defined in the National labor relations act, which has been given judicial recognition as a constitutional measure in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 81 L.ed. 893, 108 A.L.R. 1352. here is no conflict between the public policy of this Commonwealth as defined in our labor relations acts and that defined by the United States as determined by Congress in the National labor relations act. In each the public policy defined is the same.

"It follows from what has been said that the picketing in the present case was for an unlawful purpose. There was therefore no error in the order for final decree made by the judge * * *." (p. 692)

CONCLUSION

The record in this case demonstrates that the purpose of the picketing by petitioners was to force respondent to coerce his employees with reference to union affiliation and designation of bargaining representatives. Such coercion by an employer is contrary to law in the State of Washington. Picketing to compel an employer to do an unlawful act is illegal and may be enjoined. The Washington court enjoined only the furtherance of the unlawful objective and no more. Picketing to compel an employer to do an unlawful act is not protected by the Constitutional guarantees of freedom of speech. The decree of the Supreme Court of Washington should be affirmed.

Respectfully submitted,

ALFRED J. SCHWEPPE,
657 Colman Building,
Seattle 4, Washington.

MERRILL WALLACE,
304 Medical and Dental Building,
Bremerton, Washington.

Attorneys for Respondent.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
MAY 31 1950
CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 449 **449**

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK,

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

PETITION FOR REHEARING.

DANIEL D. CARMELL,
318 W. Randolph Street, Chicago, Illinois.

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 449

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 262, SAM NANCE, WILLIAM MORGANSON, CHARLEY MEYER AND E. W. HOLBROOK,

Petitioners,

vs.

W. L. GAZZAM,

Respondent.

PETITION FOR REHEARING.

Now come the Building Service Employees International Union Local 262, Sam Nance, William Morganson, Charley Meyer and E. W. Holbrook, by and through Daniel D. Carmell, their attorney, and present herewith their petition for rehearing of the above-entitled cause and respectfully pray that a rehearing be granted in said cause upon the grounds and for the reasons hereinafter set forth in the petition herewith presented.

MAY IT PLEASE THE COURT:

It is with a sickening feeling in the writer's heart that this petition for rehearing is prepared. To think that

in the year 1950, the Supreme Court of the United States will label the efforts of a handful of local union people, who are employed as maids, charwomen and cleaners, "coercing an employer" if they try to have the largest employer in their field raise his wages so that their own livelihood would not be periled.

Much is made by this Court of the mocking gesture of the employer who ordered his housekeeper—the supervisor of his employees—to take a vote of the employees in her presence after a speech by the union representative. The intimidation of employees when taking such a vote under the watchful eye of the supervisor is an all-too-well known fact warranting no further belaboring. Surely such a vote cannot be regarded as the workers' free and uninfluenced choice.

The union did not coerce the employer. It wanted to bargain with the employer. Repeatedly it made concessions and new proposals for an agreement and was encouraged to do so by the skilled lawyer of the employer. Yet, whenever a new proposal was made by the union, what was the stereotyped answer of the employer? "No." Then at a point where he decided it will do him most good, he goes to court, charges that he was coerced and asks for an injunction. Such type of procedure permits an employer to effectively prevent the organization of his workers and to thwart the process of collective bargaining; it permits him to impose his terms upon the union by relieving him from his duty to make any counter-offers to the union's proposals. If counter-offers were made, the union had an opportunity to accept or reject them. But this Court says that if the employer deliberately fails to answer a union's proposal for an agreement and flouts the process of collective bargaining and does nothing, the union in turn must do an illegal act, since it attempts

to coerce the employer into something which he does not wish to do. Thus this Court aids the machinations of a skilled lawyer when he deals with the representative of 56 maids and charwomen—the exact number of the local's membership—the union representative himself being a member of the craft. This Court says that the poor union fellow must be as smart as the skilled lawyer.

Then, we have the spectacle of using the preamble to an *anti-injunction* act as the basis for granting an *injunction*. Moreover, this preamble is identical with that of the Norris-La Guardia Act and the interpretation which was given to it in the instant case was rejected unanimously by all other courts, including this Court.

This Court further lays down, for the first time, the rule that when a union does not represent the majority of employees, it cannot ask for the right to bargain for them. Again this Court accepts a view, rejected by all other courts, that the mere assertion of a right is equivalent to the establishment of the right. The entire reasoning of this Court would be correct only, if the Washington Labor Disputes Act—which it does not—would provide like the National Labor Relations Act and other similar statutes for an orderly process of collective bargaining, appropriate bargaining units, an adequate hearing, certification of collective bargaining representatives and a duty to bargain in good faith. In the absence of such provisions to speak of "coercion of an employer" by the union, if the union asserts collective bargaining rights on behalf of the employees, seems to be highly incongruous, especially where the employer is allowed at the same time to shirk every obligation to bargain with the union and simply to ignore each and every proposal made by the union.

I.

The State Supreme Court's finding of coercion was based solely upon the absence of a direct employer-employee relationship.

This Court's decision is based upon the narrow point that the peaceful picketing was carried on in the instant case for the purpose of compelling the employer to coerce his employees' choice of bargaining representative, that such coercion was unlawful under the law of the State of Washington and that the picketing, therefore, was carried on for an unlawful purpose. In making this determination, however, this Court failed to go one step further and to examine the underlying and decisive reason upon which the State Supreme Court based its determination of coercion. A reading of the State Supreme Court's opinion, which alone can form the basis of this Court's decision, conclusively reveals that the State Court grounded its findings of coercion solely upon the absence of a direct employer-employee relationship. Thus, in reviewing all its previous decisions concerning labor controversies, the State Supreme Court stressed in its opinion with respect to each and every decision reviewed only one factor—the existence or the absence, respectively, of a direct employer-employee relationship. The following few excerpts of the State Court's opinion (Rec. 16-21) will make this point crystal-clear:

> "The facts in the *Safeway Stores, Inc.*, v. *Retail Clerks' Union, Local No. 148,* 184 Wash. 322, 51 P. 2d 372, decided in 1935, indicate that in order to get the employees of the Safeway stores to join the retail clerks' union, the latter marched pickets to and fro in front of the stores. * * * It was also held that the 1933 *labor disputes act was inapplicable to non-employee picketers.* * * *
>
> "In *Blanchard* v. *Golden Age Brewing Co.*, 188 Wash. 396, 63 P. 2d 397, decided by this court in 1936,

the 1933 act was interpreted, and three sections (7, 8 and 9) were held unconstitutional. • • • *It will be noted that in this case a 'labor dispute' within the meaning of the act was found to exist because employees of the defendant were involved.* • • •

• • •

"In *Adams* v. *Building Service Employees International Union, Local No. 6,* 1938, 197 Wash. 242, 84 P. 2d 1021, this court again had before it a case in which the evidence showed that *an outside union* was seeking to organize the workers in the plaintiff's place of business, using pickets to lend strength to the battle. • • •

"The *Safeway* case was again the basis of a decision holding that picketing done by *an outside union* was unlawful, in *Fornili* v. *Auto Mechanics' Union Local No. 297, etc.,* 1939, 200 Wash. 283, 93 P. 2d 422.

"The next case is that of *United Union Brewing Co.* v. *Beck,* 1939, 200 Wash. 474, 93 P. 772, which involved the activities of *an outside union,* and included picketing. • • •

• • •

"*O'Neil* v. *Building Service Employees International Union, Local No. 6,* 1941, 9 Wash. 2d 507, 115 P. 2d 662, 137 A.L.R. 1102, is the next case which has to do with picketing. • • • The *employer-employee relationship did not exist between the disputants.* • • •

• • •

"In *Swenson* v. *Seattle Central Labor Council, supra,* the facts were: The employer employed non-union labor. • • • Passing upon the question, identical with the one presented here, we stated [177 P. 2d 877]: 'There could not have been a dispute "between one or more employers or associations of employers and one or more employees or associations of employees," as provided in the act, because here, *no members of the picketing unions were employees of the Sweden manufacturing company. A jurisdictional dispute between rival unions can become a*

> *"labor dispute" provided the union members involved are employees of the same company,* and provided further that no exclusive bargaining agency has been set up or provided for. Here, there was no labor dispute.'" (Emphasis supplied.)

If the existence or the absence of a direct employer-employee relationship had no bearing upon the case, as this Court seems to believe, why this constant emphasis of the State Supreme Court upon that point?

The fact that the absence of a direct employer-employee relationship was the pivotal point of the State Court's decision is corroborated and confirmed by the express overruling of the cases of *O'Neil* v. *Building Service Employees International Union, Local No. 6,* 9 Wash. 2d 507, 115 P. 2d 662, 137 A.L.R. 1102 (1941) and *S and W Fine Foods, Inc.* v. *Retail Delivery Drivers and Salesmen's Union, Local No. 353,* 11 Wash. 2d 262, 118 P. 2d 962 (1941). These cases dealt with the question of the legality of peaceful picketing *viewed exclusively from the aspect of the absence of a direct employer-employee relationship,* and declared picketing lawful where the pickets were not employees of the picketed employer. Here again the same question as previously posed, arises: If coercion of the employer to compel his employees' choice of representative was the sole issue, independent from and unconnected with the existence or the absence of a direct employer-employee relationship, why was it necessary for the State Court to expressly overrule two previous decisions which were based exclusively upon the legality of picketing in cases where a direct employer-employee relationship was absent and, therefore, had supposedly no bearing upon the present case? The answer is, of course, obvious: *the State Court considered the picketing coercive only because of the absence of a direct employer-employee relationship.* Yet, since this is the basis of the

State Court's decision, the present case is squarely in point with *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855 (1941). It is, therefore, respectfully pointed out that it is not quite understandable how this Court can declare that the State of Washington "has not here, as in Swing, relied on the absence of an employer-employee relationship." This is the very thing upon which the State Court relied. It is patent upon the face of the State Court's opinion; it relied upon it in all its previous decisions where there was no direct employer-employee relationship present, and reached in them the same result as in the instant case, with the exception of the *O'Neil* and *S and W Fine Food* cases, which were promptly overruled. For these reasons, the same result should be reached by this Court in the present case as was reached in the *Swing* case, and the State Court's decision reversed.

In this connection it should be stressed that the State Court's opinion, which alone is under attack in the present case, prohibits by its wording each and every type of picketing and establishes the union's liability for damages for picketing of *whatever kind and nature*. It does not contain any subtle *theoretical and meaningless* distinctions and artificial refinements distinguishing between "picketing per se" or "picketing directed at employees for organization purposes" and picketing for the purpose of violating the policy of the State of Washington. The injunction decree which is phrased in such a way as to restrain the union from endeavoring to compel the employer to coerce his employees to join the union was issued by the trial court and not by the State Supreme Court. But it is the State Supreme Court's opinion, which, as just mentioned, is broad enough to prohibit any type of picketing in the absence of an employer-employee re-

lationship, that is under attack in the present case—and not the trial court's injunction decree; this is contrary to the *Swing* case, where the injunction decree of the Illinois Appellate Court was at issue and not the opinion of the Illinois Supreme Court.

Keeping these considerations in mind, it is respectfully reiterated that this Court reconsider its opinion.

II.

The State Court prohibited the exercise of rights guaranteed by the Federal Constitution.

This Court states in its opinion "that picketing is in part an exercise of the right of free speech guaranteed by the Federal Constitution," citing the *Angelos*, *Wohl*, *Swing*, *Carlson*, *Thornhill*, and *Senn* cases. Although none of the cases cited, with the exception of the concurring opinion of Mr. Justice Douglas in the *Wohl* case, contains such a qualification as is expressed in the just cited statement, one feature remains outstanding—the fact that picketing involves the right of freedom of speech, and that peaceful picketing is a means of communicating thoughts, ideas, grievances,—"the workingman's means of communication". (*Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200). The question then arises: May picketing, insofar as it is a means of communication, be used by workers, free from any interference by a state, to convey grievances to the public concerning conditions in which the workers as well as the public have a vital and legitimate interest? The answer to this question must be in the affirmative; for, insofar as picketing is a means of communication, it must receive the same constitutional protection as other

means of communication receive, such as newspaper articles, radio-broadcasts, pamphlets and so forth. Yet, could it be seriously contended that the right of freedom of speech would not have protected a newspaper article published by the union, which contained the very same grievances against the employer as those printed on the picket signs? Would that have been considered coercion? Obviously, that part of picketing which is communication may not be suppressed. No such distinction was made in the instant case by the State Court.

It cannot be doubted that workers, like any other citizens have the right to inform the community of the facts of a labor dispute. However, in the present case, the union and its members were effectively shut off by the State Court from doing so, under the guise that such communication was intended to coerce the employer; or in other words, was intended to inflict damage upon the employer, if he would not give in to the union's demands. But it is a recognized principle that workers and employers compete with each other over the share and division between them of the joint product of capital and labor (see Chief Justice Taft's statement in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209; and Justice Brandeis' words in *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468), and that such competition justifies "the intentional inflicting of temporal damage, including the damage of interference with a man's business by some means, when the damage is done, not for its own sake, but as an instrumentality in reaching the end of victory in the battle of trade." (Justice Holmes in his dissenting opinion in *Vegelahn* v. *Guntner*, 167 Mass. 92, 106, 44 N. E. 1077, 1081 (1896)): The fact that such damage might result to the employer and the further fact that the pressure of publicity might

influence an employer to yield to the union's demands is not such an evil that it justifies suppression of free speech. The decision of the State Supreme Court of Washington suppresses free speech; it takes away the right from workers to request the public not to patronize a business which employs men whose lower wages and inferior working conditions tend to undermine the higher wage and living standards of union workers.

Contrary to its previous rulings, this Court upholds the State Court in its suppression of free speech. It accepts the findings of coercion by the State Court without any question and does not examine whether a constitutional right is thereby infringed upon or not. Thus, it departs from its previous holdings in cases involving similar factual situations. In the *Swing* (312 U. S. 321), *Wohl* (315 U. S. 769), and *Angelos* (320 U. S. 293) cases the state courts declared the picketing employed by the unions coercive and unlawful, yet this Court persistently refused to accept those findings and stressed that it would not permit the state courts to use such findings as a device to interfere with rights guaranteed by the United States Constitution. Thus the New York State Court found in the *Wohl* case, as quoted by this Court in that decision, "that the respondents 'are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the Defendants *who seek to compel them to employ union labor.*' ". (Emphasis supplied). This Court, however, determined that such finding of coercion could not be used by the state court as a means to outlaw peaceful picketing, and thereby to inhibit the right of freedom of speech, and reversed the state court's decision. The same is true with respect to the *Angelos case*. There, too, the New York court attempted to outlaw picketing by finding that the picketing

was unlawful under the state statutes. This Court pointed to the fallacy of this theory and said (88 L. ed. 60):

> "The Court here, as in the *Swing* case, was probably led into error by assuming that if a controversy does not come within the scope of state legislation limiting the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined. But, as we have heretofore decided, a state cannot exclude working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' *American Federation of Labor* v. *Swing*, 312 U. S. at 326, 85 L. ed. 857, 61 S. Ct. 568."

This Court declares in its opinion that the right of freedom of speech is not infringed upon by the State Court, that picketing *per se* or picketing directed at employees for organizational purposes is not prohibited under the injunction decree of the trial court and that this Court cannot agree with petitioners' reading of the injunction that "whatever types of picketing were to be carried out by the union would be in violation of the decree." It is respectfully pointed out that this statement of the Court deals only with part of the petitioners' contention. As stated by them in their Reply Brief (p. 16) an analysis of the trial court's decree will reveal not only that every type of picketing is banned by the decree, but also that *every other kind of peaceful communication* is prohibited. This appears clearly from the very wording of the decree which forbids the union "from endeavoring to compel plaintiff to coerce his employees to join the defendant union * * * by picketing the hotel premises of plaintiff, * * * in any manner whatsoever, whether *di-*

rectly or indirectly, and by urging and persuading others to withhold their patronage from the plaintiff • • •" (Emphasis supplied.) (Rec. 39). A more effective ban of free communication can hardly be visualized. It should once more be emphasized that not only picketing was banned but any other type of communication; the employer can always say under the decree in question that, for instance, a radio broadcast which would point out to union members the fact that non-union employees work in the Emetai-Inn, might have the effect to urge persons to withhold their patronage from his place of business, and, thereby, might *indirectly* compel him to force his men to join the union or to choose the union as bargaining representative.

This Court devotes in its opinion its entire attention to the problem of picketing, basing its determination upon the peculiarities of picketing as a means of communication. But it fails to consider the broad impact of the State Court's opinion and the trial court's decree which include within their proscription all means of communication used by a union and do not restrict themselves to picketing alone. If that fact is taken into consideration, coupled with a recognition of the broad import of the decree upon all types of communication, it seems to the petitioners that a different result must be reached by this Court, since the effect of the State Court's infringement upon the right of freedom of speech is as broad and all-inclusive as that of the Illinois Court in the *Swing* case.

This Court relies in its opinion upon the case of *Giboney* v. *Empire Storage Co.*, 336 U. S. 490. It is respectfully contended that the latter case differs materially and widely from the present one and that the decision rendered in that case should not be considered as one controlling the present situation. The union did not here use

its economic power to compel the employer to abide by union policy rather than by the declared policy of the state. It merely attempted to advertise the fact that here was a business which was inimical to the best interests of labor. A state is not free at its whim, will and pleasure to declare conduct unlawful. It can do so only if it does not thereby infringe upon constitutionally guaranteed rights. Were it otherwise, a state could by that simple device defeat the constitutional rights of every citizen. Yet, this was done by the State Supreme Court of Washington when it suddenly declared conduct unlawful, which had been up to that time lawful, and thereby effectively prevented union men from communicating their grievances to the public; not only by means of picketing but by any other means as well.

Respectfully submitted,

DANIEL D. CARMELL.

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

DANIEL D. CARMELL,
Attorney for Petitioners.